THE

BILLS OF SALE ACTS

1878-1882.

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WITH

NOTES AND PRECEDENT.

BY

GEORGE BURGESS LANCASTER WOODBURNE, M.A.,

Of Lincoln's Inn, and of the Northern Circuit, Esquire,
Barrister-at-Law.

With an Appendix, containing a digest of cases up to date (November 1887), and a precedent, with the additions warranted by the recent decisions, and an index of all the cases cited in the original edition and the digest.

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LONDON.
1887.

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AN INTRODUCTION, NOTES, & FORM.

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PREFACE.

It has been my endeavour to introduce, and where necessary to explain, every reported case upon the working of the combined statutes of 1878 and 1882; and for the sake of more convenient reference, I have, as far as possible, placed those statutes side by side when they have relation to the same parts of the subject.

For the convenience of those practising at a distance from a Library of Reference, I have given an epitome of all the cited cases.

54, *John Dalton Street*,
Manchester, *August*, 1886.

INTRODUCTION.

THE history of the legislation which has been effected as regards Bills of Sale is so simple as to require little comment. Creditors were defrauded by means of secret Bills of Sale. Persons gave credit to those who were in apparent possession of goods and furniture on the strength of their enjoying such possessions. When the time came for payment, and on the failure to pay, proceedings resulted in execution, it was found that the rights of the creditor had in many cases been frustrated by the secret disposal of the goods. In 1854, therefore, a measure became law by which it was made necessary to file or register every Bill of Sale of personal chattels within 21 days of the execution thereof, for unless a Bill of Sale was so registered, it was to be void as against trustees in bankruptcy and execution creditors, in respect of such of the chattels as remained in the apparent possession of the grantor. The Act provided that the register of such Bills of Sale was to be open to the inspection of the public upon payment of certain fees, so that if creditors were deceived by apparent possession, it was owing to their own negligence in not searching the register of Bills of Sale. In 1866 an Amendment Act was passed, and again, in 1878, the statute which, with the further Amendment Act of 1882, now governs all Bills of Sale, became law.

In considering these statutes it is necessary to understand—(1) what is a Bill of Sale within the meaning of the Acts; (2) what sort of property is passed by such documents.

(1) The documents which are governed by the statutes are enumerated in section 4 of the Act of 1878, and are Bills of Sale, whether absolute or conditional assignments, declarations of trust without transfer, inventories of goods with receipts thereto attached, or receipts for purchase moneys of goods and also powers of attorney, authorities, or licence to take possession of personal chattels as security for any debt, and also any agreement by which a right in equity to any personal chattels shall be conferred.

(2) Only Bills of Sale of "personal chattels" are within the Acts. Bills of Sale of any other sort of property do not therefore require registration, nor do they require in any way to comply with the provisions of the Acts. "Personal chattels" are carefully defined (sect. 4, Act 1878). They are such goods

and furniture as are capable of transfer by delivery. But they do not comprise fixtures (except trade machinery) or growing crops unless they are assigned separately from the land upon which they are severally placed or growing. If they are assigned together with the land or with any interest in the land, the deed of assignment will not be a Bill of Sale within the statutes.

A definition of "trade machinery" is to be found in sect. 5, Act 1878, and it must be noticed that from such definition certain fixtures in connection with steam or water power are excluded.

Therefore when such engines are assigned the document is not a Bill of Sale which requires registration or compliance with the Acts.

Acts 1878 and 1882.

The Act of 1878, which repealed the previous Acts, must be read together with the Amendment Act of 1882. But as the later Act only applies to Bills of Sale made for securing the payment of money by security of personal chattels, it may be at once stated that while mortgage Bills of Sale are governed by both the statutes, other Bills of Sale are still governed by the Act of 1878 alone. By the Act of 1882 certain sections of the earlier Act were repealed, but it cannot be too well noted that this repeal only extends to the sections so far as they apply to mortgage Bills of Sale. The Act of 1878 reduced the time for registration to seven days after execution. While the earlier Acts had as their object merely the protection of creditors, the framers of that of 1878 had also in view the protection of ignorant debtors who granted Bills of Sale. It introduced a new formality in the execution of a Bill of Sale: each of such bills was to be attested by a solicitor, and the attestation was required to state that the meaning of the bill had been by such solicitor explained to the grantor. But this formality was not found to work as a sufficient safeguard, so as regards mortgage Bills of Sale it was repealed by the Amendment Act, which provided a greater protection in the shape of a statutory form for every mortgage Bill of Sale, which was intended to be so simple as to be within the comprehension of the most ignorant. The grantors of mortgage Bills of Sale are also further protected against the injustice of unscrupulous money-lenders by the Amendment Act forbidding the seizure of the chattels comprised, excepting for five definite causes—the non-payment of the debt at the appointed time, or breach of any covenant or agreement in the bill, which is necessary for the maintenance of the security; the bankruptcy of the grantor; the refusal without reasonable excuse to produce and if required to deliver to the grantee the receipt for rent, rates, and taxes, upon demand made in writing; if the grantor shall fraudulently remove or suffer to be removed any of the goods; and if execution shall have been levied upon the goods of the grantor under any judgment at law; and since the case of

Hammond v. *Hocking*, the refusal to produce the receipt for payment of premiums of insurance must be added as a legitimate ground for seizure. The form in the schedule allows covenants to be introduced so long as they are for the maintenance or defeasure of the security, and insurance is held to be necessary to the maintenance of the security.

The Amendment Act provided another safeguard to debtors by prohibiting the sale of the chattels comprised until five clear days after seizure, so that in the meantime the grantor of the Bill of Sale can either pay the debt, or, in the case of an improper seizure, appeal to the Courts, and so prevent the sale of his chattels. The Amendment Act also gives further facilities for searching the Bills of Sale Register. When a Bill of Sale is registered which gives security upon chattels which are outside the London Bankruptcy district, the Registrar is enjoined to forward an abstract of the bill to the Registrar of the County Court of the district in which the goods are lying, so that creditors may at once make a search in their own locality without sending to London.

As great injustice was found to be done by unscrupulous lenders of money, especially in the smaller transactions, every mortgage bill made after the commencement of the Act for a less consideration than £30, was made void by the Act of 1882.

The Act of 1878 made unregistered Bills of Sale void as against trustees in bankruptcy and execution creditors, but left them good as against the grantor. By the Act of 1882 a mortgage Bill of Sale which does not comply with the rules as to registration and form is void altogether, and by the decision in *Davies* v. *Rees* the covenant to repay the money lent was also held to be void.

Every document which gives security of chattels for the payment of money is a Bill of Sale within the Act of 1882.

The law requires every Bill of Sale, whether an absolute or a mortgage bill—

1. To state the true date of execution.
2. To state the true names, residences, and descriptions of the parties.
3. To truly state the consideration for which it is granted.
4. To be registered within seven days after execution.
5. To be duly executed.
6. To be stamped.

The law further requires an absolute Bill to be attested by a solicitor.

A mortgage Bill of Sale must be attested by one or more credible witness or witnesses, but in regard to such Bills the formality of attestation by a solicitor is abolished.

As regards mortgage Bills of Sale the Act has introduced some additional requirements which must be complied with. Such Bills must be drawn according to the form in the schedule

of the Act, and must contain nothing contrary to the Act nor omit anything which is contained in the schedule. It must be so simple that "one who runs may read." The Amendment Act also contained a new and important rule as to the property passed by a mortgage Bill of Sale. The chattels must be specifically described in the schedule, and if they are not so described, or if the grantor is not the true owner of them at the date of the execution of the Bill, the Bill in respect of them is void, except as against the grantor. Exceptions, however, are made in respect of growing crops separately assigned, and of fixtures, &c., brought upon the premises in lieu of other such fixtures, &c., which have been specifically described in the schedule of the Bill of Sale.

In Scotland Bills of Sale are unknown to the law. In Ireland Bills of Sale are governed by the Bills of Sale (Ireland) Act, 1879.

BILLS OF SALE ACTS.

BILLS OF SALE ACT, 1878, 41 and 42 Vict., c. 31.

An Act to consolidate and amend the law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels. 22nd July, 1878.

Whereas it is expedient to consolidate and amend the law relating to Bills of Sale of Personal Chattels :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows :

Act 1878, s.s. 1-4. Short Title.

1. This Act may be cited for all purposes as the Bills of Sale Act, 1878.

Commencement.

2. This Act shall come into operation on the first day of January, 1879, which day is in this Act referred to as the commencement of this Act.

Application of Act

3. This Act shall apply to every Bill of Sale executed on or after the first day of January, 1879 (whether the same be absolute or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, or either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such Bill of Sale (1)

BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882, 45 and 46 Vic. c. 43.

An Act to amend the Bills of Sale Act, 1878. 18th August, 1882.

Whereas it is expedient to amend the Bills of Sale Act, 1878 :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882 ; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commencement of Act.

2. This Act shall come into operation on the first day of November, 1882, which date is hereinafter referred to as the commencement of this Act.

While the Acts of 1854, 1866, and 1878 were intended chiefly to protect creditors from being defrauded by means of secret Bills of Sale of personal chattels, the Amendment Act was passed more especially as a protection to borrowers who gave as security Bills of Sale on personal chattels, and who in many cases suffered hardships at the hands of unscrupulous money lenders. This protection had been attempted in the principal Act, but it was found necessary to strengthen it by means of the Amendment Act of 1882.

Construction of Act, 41 and 42 Vict., c. 31.

3. The Bill of Sale Act, 1878, is hereinafter referred to as "The principal Act," and this Act shall so far as is consistent with the tenour thereof be construed as one with the principal Act ; but unless the context otherwise requires (2) shall not apply to any Bill of Sale duly registered before the commencement of this Act, so long as the registration thereof is not avoided by non-renewal or otherwise.

1. The words "Whereby the holder or grantee has power, either with or without notice, ... to seize or take possession of any chattels comprised in or made subject to such Bill of Sale," are still in force, and a document which does not come under this definition is not a Bill of Sale within the Acts. *In re Hall ex parte Close*, 54 L.J., C.L.; 43 L.R., 14, Q.B.D., 386.

2. With the exception of sec. 13, which requires that five clear days should elapse between the seizure and sale or removal of goods under a Bill of Sale, the Act of 1882 does not apply to Bills of Sale registered before the later Act came into force. Nor does it apply to unregistered Bills of Sale which were executed seven clear days before the commencement of the Act. *Hickson v. Darlow.* L.R. 23, Ch. D. 690; 52 L.J., Ch. 453.

Interpretation of Terms.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction, that is to say, the expression "Bill of Sale" shall include Bills of Sale, assignments, transfer, declarations of trust without transfer, inventories of goods, with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels and also powers of attorney authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents: that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers, or assignments of any ship or vessels, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, Bills of Sale of goods in foreign parts, or at sea, bills of lading, India warrants, warehouse-keeper's certificates, warrants or orders for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or

The expression "Bill of Sale" and other expressions in this Act have the same meaning as in the principal Act, except as to Bills of Sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned Bills of Sale and other documents this Act shall not apply.

authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.

Act of 1878 remains in force for all but mortgage bills of sale.

The Act of 1882 only applies to Bills of Sale made *to secure the payment of money.* In reading the Amendment Act we may therefore always read Mortgage Bill of Sale for Bill of Sale. With regard to all other Bills of Sale the Act of 1878 remains unaltered. Debentures are perhaps also governed by the Act of 1878, but see note to sec. 17, Act 1882.

Sect. 20 repealed only as regards mortgage bills.

Where a Bill of Sale was given by way of absolute transfer the chattels comprised in it were held not to be within the possession, order, or disposition of the grantor within the meaning of the Bankruptcy Act of 1869, because sec. 20 of the Act 1878 had not been repealed as regards absolute Bills of Sale by the Act of 1882.

Swift v. *Pannell*, 24 Ch.D. 210; 53 L.J., Ch. 341.

Absolute bill must still be attested by solicitor (sect. 10, 1878).

And, again, an absolute Bill of Sale must still be attested by a solicitor in the manner prescribed by sub-section 1 of sec. 10 of the Act of 1878, for the repeal of that section by the Amendment Act is only a repeal so far as Mortgage Bills of Sale are concerned. *Casson* v. *Churchley*, 53 L.J.; Q.B. 335. See also *Robinson* v. *Tucker*, 1 C. & E. 173, in which sec. 8, Act 1878, is held to be still in force as regards absolute Bills of Sale.

What is a bill of sale within Act 1882.

A Bill of Sale within the meaning of the Amendment Act may now be defined as any document (other than those excepted by sec. 4, Act 1878) which gives security of personal chattels* for the payment of money. The intention of the Act was clearly expressed by Brett, M.R., in *re* "Townsend *ex parte* Parsons." 16 Q.B.D. 532; 55 L.J., Q.B. 137; 1 *Times* L.R., 253.

"The legislature knew that Bills of Sale were used by many lenders of money to puzzle debtors and ignorant borrowers, and that even practised solicitors could not safely advise as to the meaning of the Bills of Sale. Therefore it was *against written documents* that the Legislature meant to act. The ordinary effect of language should be given to the legislation, and it should be said that it struck against every document which gave security of chattels for a money advance. If so, it was to be taken to be the intention of the Legislature that if the parties could not make their agreement in the statutory form it was not to be made at all."

In the same case the judgments *in re Hall, ex parte Close* (14 Q.B.D. 386; 54 L.J.Q.B. 43), and *in re Cunningham* (L.R. 28 Ch.D. 682; 54 L.J. Ch.D. 448), so far as they lay down that a transaction which cannot by possibility be brought within the form in the schedule of the Act 1882, is a transaction to

* For definition of "personal chattels," see sub-sec. 2, sec. 4, Act 1878, and notes.

Where immediate possession of chattels is granted.

which the Act does not apply were disapproved. In this case (*in re Townsend*) a letter had been written authorising a person, in consideration of a loan of money, to take immediate possession of furniture, &c., and to sell them, and out of the proceeds to deduct money due to him from the owner and to pay the balance to the owner. The owner requested the grantee of the furniture, notwithstanding the authority to take immediate possession, to allow him to retain the goods for a fortnight, which he accordingly did. It was held that the letter was "a licence to take possession of personal chattels as security for a debt," within sec. 4 of the Act of 1878, and a Bill of Sale for the security of money within the Act of 1882, and consequently bad for want of compliance with the provisions of that Act.

But previously to this case, Pearson, J., held *in re Cunningham and Co.*, L.R. 28, Ch.D. 682; 54 L.J., Ch. 448 (and to this part of the judgment exception has not been taken), that where security is given for the repayment of an advance, and the lender takes immediate possession of the goods pledged, the security is not within the Bills of Sale Acts; and in his judgment he followed Cave, J., (*ex parte Close* 54 L.J. *Bank* 43), who said: "Apart, however, from any authority, I am satisfied on the construction of the Bills of Sale Acts that they do not include letters of hypothecation accompanying a deposit of goods by merchants or factors, or pawn-tickets given by pawnbrokers, or, in fact, any case where the object and effect of the transaction are immediately to transfer the possession from the grantor to the grantee."

As regards such transactions the law, therefore, appears to be this. If the document is to secure the payment of money it is a Bill of Sale; if it is to secure the return of the chattels to their original owner upon the payment by him of a certain sum, and so take them out of the actual possession of the lenders, it is not a Bill of Sale.

This position is clearly within the object and spirit of the Acts, for when possession is actually taken of chattels, creditors of the owner are not likely to be deceived, so the main object of the principal Act is not frustrated. The Amendment Act applies to Bills of Sale given by way of security for the payment of money and is to protect borrowers. In cases where immediate possession is taken of the chattels, the document is a mere record of the fact and not a security, for the lender's security is in the possession itself and not in the document. If the document or pawn-ticket is a security at all, it is a security not for the payment of money but for the return of the goods upon the original debt being satisfied, and is in fact a protection to the borrower. If the document were necessary to secure the return of the money to the lender it would be a Bill of Sale, but since he has possession of the goods and can so recoup himself without it, it is not a Bill of Sale, and therefore not within the operation of the statute. When, however, the

right given in the document to take immediate possession, is not taken advantage of, the document is the only security in the hands of the lender, and therefore it is a Bill of Sale. In *re Hardwick ex parte Hubbard*, reported in the *Times* of August 9th, 1886, this view is held by the Court of Appeal, and it is distinctly laid down that documents relating to a pledge of goods are not Bills of Sale.

Evasions of the Acts.

If the document gives immediate possession, and the grantee allows the chattels to remain in the hands of the grantor, a strong presumption is raised that the transaction is an attempt to evade the provision of the Bills of Sale Acts. Any attempts at such evasion are very stringently dealt with by the Courts, and will most certainly fail. Where an attempt was made to evade the Act by the employment of a hiring agreement and the payment of instalments under it was guaranteed (the real contract between the parties not being expressed), the agreement was held to be a Bill of Sale within the Acts, and consequently void for non-compliance with their provisions;

Brown v. *Blaine and another.* 1 *Times* L.R., 158.

and where a hiring agreement was used to cover a security for a loan it was held to be within the Act, and bad for non-compliance with it.

North Central Waggon Co. v. *M. S. & L. Ry. Co.* 32 Ch. D. 477.

Bills absolute in form.

Absolute Bills of Sale remain within the scope of the original Act, and are untouched by the Amendment Act; but should a Bill of Sale while being absolute in form, in reality be only a Bill of Sale by way of security, it will come within the later Act, and be void for non-compliance with sec. 9.

Building agreements. Not within the Acts.

A building agreement which provides that all building material and other materials brought upon the land by the builder, the intended lessee, should, whether affixed to the freehold or not, become the property of the owner of the land, the intended lessor, is not a Bill of Sale within the Act of 1878.

Reeves v. *Barlow.* 53 L.J., Q.B. 192; 11 Q.B.D. 610.

And the reason is explained in *ex parte Close in re Hall.* 14 Q.B.D. 386; 34 L.J., Q.B. 54. There was nothing in the transaction which could possibly bring it within the Act of 1878 but what would equally have brought it within the Act of 1854. But the same reasons were held to be insufficient to bring similar building agreements within the Act of 1854.

Blake v. *Izard.* 16 W.R., 108.

Brown v. *Bateman.* 36 L.J., C.P. 134; L.R. 2, C.P. 272.

Therefore it would be outside of the Act of 1854, and as no specific amendment was made in the law by the Act of 1878, so as to bring these agreements under its scope in clear terms, this and other building agreements remain *sui generis*, and are outside the Acts.

Where several documents they must be taken as one.

In considering what are Bills of Sale within the Act, it must be remembered that when two documents together constitute one security they must be regarded as one transaction, for the

purpose of ascertaining whether they are or are not within the Bills of Sale Acts.

In re Cunningham & Co., Limited. 28 Ch. D. 682; 54 L.J. Ch. 448.

Void bills of sale not to be evidence nor conversations leading up to them.

It is worthy of note that documents amounting to Bills of Sale, within the Act of 1882, but not complying with that Act, cannot be looked at to explain the possession of goods, neither can the oral negotiations leading up to such documents be given in evidence.

In re Townsend ex parte Parsons. 16 Q.B.D. 532; 53 L.J.Q.B., 137.

Documents in sect. 4, Act 1878. Subject to which Act.

The documents enumerated as Bills of Sale in the 4th sect. Act 1878, are Bills of Sale under the Amendment Act of 1882, only if they are for the purpose of securing the payment of money upon the security of personal chattels. If they are for such purpose they must comply with all the requirements of the later Act. If they are not for such purpose, they are nevertheless Bills of Sale, and must still comply with the Act of 1878, but will not be void for want of complying as to form, &c., with the Act of 1882.

Receipts.

When a receipt is the whole contract entered into, it is a Bill of Sale, and must comply with the requirements of the Acts. Thus, for example, a receipt given for securing the payment of money as security of chattels will be void for non-compliance with sect. 9 of the Act 1882.

But where there is a contract of purchase and sale which passes the property, and the receipt is merely given as an acknowledgment of the money paid, the receipt is not a Bill of Sale. *Fox* v. *Barnett.* 2 *Times* L.R., 233.

Marsden v. *Meadows.* L.R. 7, Q.B.D., 80 cited.

A receipt is only a Bill of Sale when intended to be the instrument of transfer or a record of the transaction. If the transaction is complete before the receipt is given, the receipt is not a Bill of Sale.

Preece v. *Gilling, Hepworth claimant.* 2 *Times* L.R., 79.

Receipts, where the goods remain in the possession of the seller, are Bills of Sale, and must be registered.

Snell v. *Heighten.* 1 C. and E., 95.

Exceptions in sect. 4, Act 1878. Assignments for benefit of creditors.

An assignment for the benefit of creditors, to come within this exception, must be an assignment for the benefit of all the creditors. If on the face of it any creditor is excluded, it is a Bill of Sale. If there is no such exclusion, and all the creditors can if they choose take advantage of this assignment, it is excepted from the operation of this Act.

General Furnishing Co. v. *Venn.* L.J., Ex., 220.
Bolden v. *Lond. and West. Disct. Co.* 5 Ex. Div., 47.
Johnson v. *Ossenton.* L.R. 4, Ex. 108; 35 L.J., Ex. 76.
Ashford v. *Tuite.* 7 Ir., C.L. Rep., 91.

Marriage settlements.

Ante nuptial settlements only are excluded from the operation of the Acts. (1) *Post* nuptial settlements are regulated by the

Act of 1878, unless they are given as security of chattels for the payment of money, in which case they will come within the scope of the Act of 1882.

(1) *Fowler* v. *Foster.* 28 L.J., Q.B. 210.
Ashton v. *Blackshaw.* 39 L.J., Ch. 205.

Transfers of goods in the ordinary course of business.

In *re Hall ex parte Close* (54 L.J., C.L. 48; 14 Q.B.D., 386), a quere was raised whether a pledge by a trader of stock-in-trade, which he has bought on credit and not paid for, is "a transfer of goods in the ordinary course of business of any trade or calling," within the meaning of that expression in the Bills of Sale Act, 1878.

Hiring agreements.

Hiring agreements as a rule are not Bills of Sale within the Acts, for though they give power of distress upon failure to pay the agreed rent of the chattels, the property in the chattels never passes from the original owner. It is, therefore, really nothing more than a licence to the owner to take his own goods in case their hire is not punctually paid. If the transaction, however, turns out to be not *bona fide*, or, in other words, an attempt to evade the Bills of Sale Acts, the agreement will be held to be a void Bill of Sale.

North Central Waggon Co. v. *M. S. and L. Ry. Co.* 32 Ch. D. 477.
Phillips v. *Gibbons.* 29 L.T.O. S. 91; 5 W.R. 527.
Ex parte Lovering re Jones. L.R. 9, Ch. 621; 43 L.J., Bank., 116.
Orme re Lloyd. 38 L.J., 328.

Goods at sea.

An hypothecation note, which would otherwise be a mortgage Bill of Sale, and subject to the Acts, is excepted from the Acts if the goods were still at sea when the note was executed.

Reg. v. *Townshend.* 15 Cox, 446.

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to

be removed from any farm where the same are at the time of making or giving of such Bill of Sale.

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a Bill of Sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

"Prescribed" means prescribed by rules made under the provisions of this Act.

Bills of Sale of personal chattels are the only Bills of Sale which require registration, and which must comply in other respects with the Acts. Assignments of things other than "personal chattels" are good without such compliance, as they are entirely outside the Acts. Personal chattels are goods, furniture, and other articles capable of complete transfer by delivery, fixtures when separately charged or assigned, except three classes specially exemplified in sect. 5, Act 1878, and trade machinery as defined in the same section. But fixtures (except trade machinery) and growing crops when assigned with any interest in land (and as to when they are separately assigned or charged, see sect. 7, Act 1878) are not personal chattels, nor are shares or interests in the stock funds or securities of any government, or in the capital or property of any incorporated or joint-stock company. [But Bills of Sale given by companies are not excepted from the operation of the Acts. (*In re Cunningham & Co.* 28 Ch.D., 682; 54 L.J., Ch., 448.)]

Choses in action. Book debts not subject to Acts

Nor choses in action. Therefore book debts may be assigned in an unregistered deed, and future book debts are not within Sect. 4 and 5, Act 1882.

Official Receiver v. *Tailby.* 17 Q.B.D., 88.

Nor are stock and produce which by covenant agreement or custom ought not to be removed from any farm where they are at the time of making the Bill of Sale.

The rule as to apparent possession is now of no consequence as regards mortgage Bills of Sale, as those Bills, if they do not comply with the Act, are void in all cases.

Apparent possession.

The rule as to chattels being deemed to be in the apparent possession "of the person making or giving a Bill of Sale so long as they remain or are in or upon any house, mill, warehouse, building, works, &c., occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person" does not apply where due notice has been publicly given of the change of ownership. H. assigned by an un-

registered Bill of Sale on the 4th March, 1883, the goodwill and stock-in-trade of a business carried on by him, but continued to manage the business on behalf of the grantee, residing in the house where the business was carried on and using the furniture. At the date of the assignment a circular was sent to all the customers notifying the change of ownership, and an advertisement, signed by H. as manager, was inserted in a local newspaper, stating that the business would henceforth be carried on by H. & Co. The goods comprised by the Bill of Sale having been taken in execution in May, 1885, to satisfy a judgment debt, due from H. to the defendant, it was decided that the goods were not in the apparent possession of H. within the meaning of sect. 4 and sect. 8 of the Bills of Sale Act, 1878, and that consequently defendant was not entitled to the goods under the latter section.

Gibbons v. *Hickson.* 55 L.J., N.S. ; Q.B., 119.

Apparent possession and actual enjoyment.

The clause makes a distinction in regard to apparent possession between the case of goods actually on the premises occupied by the grantor of a Bill of Sale and goods not on such premises, but in his use and enjoyment. If the chattels are upon premises actually occupied by him, use and enjoyment need not be proved. If, however, the chattels are upon premises not in the grantor's occupation, it must be proved, to bring them within section 8 of the Act of 1878, that the grantor "used and enjoyed them."

The occupation of premises must be real occupation. Where the grantor of a Bill of Sale rented the rooms in which the chattels subject to the Bill of Sale were placed, but resided in another house, and he, upon failure to pay the sum secured, had given the key to the grantee, who had opened the rooms and marked some of the goods with his name, it was held that his occupation of the rooms was not sufficient to bring the goods within the section.

Robinson v. *Briggs.* 40 L.J., Ex. 17; L.R. 6, Ex. 1.

Goods, how taken out of apparent possession.

To take goods out of the apparent possession of the grantor, the grantee must do something which will publicly take the goods out of such apparent possession, as by advertisement in *Gibbons* v. *Hickson* above.

The private placing of a bailiff in possession, and allowing the grantor the use of the chattels, is insufficient. It is sufficient, however, together with other circumstances, such as the grantee's dismissing the servants and locking the premises, which make the change of ownership notorious.

Ex parte Mortlock in re Basham. W.N., 1881, p. 161.

Chattels in the hands of a bailee, over which the grantor still has power of use and disposal, if he thinks fit to exercise it, remain in his apparent possession.

Ancona v. *Rogers.* 1 Ex.D. 285.

Application of the Act to trade machinery.

5. From and after the commencement of this Act, trade machinery shall, for the purposes of this Act, be deemed to be per-

sonal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a Bill of Sale as to any other personal chattels, shall be deemed to be a Bill of Sale within the meaning of this Act.

For the purposes of this Act "trade machinery" means the machinery used in or attached to any factory or workshop;

1st—Exclusive of the fixed motive powers, such as the water-wheels and steam engines, and the steam-boilers, donkey-engines, and other fixed appurtenances of the said motive powers; and,

2nd—Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; and

3rd—Exclusive of the pipes for steam, gas, and water in the factory or workshop. The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain in or incidental to the following purposes or any of them; that is to say—

(*a*) In or incidental to the making any article or part of an article; or

(*b*) In or incidental to the altering, repairing, ornamenting, finishing of any article; or

(*c*) In or incidental to the adapting for sale any article.

This definition must be read together with the definition of personal chattels in sect. 4, Act 1878. "Personal chattels shall mean . . . (when separately assigned and charged) fixtures, . . . but shall not include chattel interests in real estate nor fixtures (except trade machinery as hereinafter defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed." The Act 1878 (sect. 3) does not therefore apply to any fixtures attached to land unless

1. They are separately assigned or charged. (See sect. 7, Act 1878.) Or,

2. They are trade machinery.

In this section we have a definition of trade machinery, and

three classes of fixtures excluded from it. These three classes are absolutely excluded from the Acts, and an assignment of them will not be a Bill of Sale within the scope of either Act.

Fixtures separately assigned or charged and trade machinery are excluded from the operation of sect. 4 and 5 of Act 1882, if they are brought upon the land or into any of the specified buildings in substitution for like fixtures, &c., specifically described in the schedule to a Bill of Sale. (See sects. 4, 5, 6 of the Amendment Act.) Whatever is essential to the working of fixed machines forms part of the realty, and goes with the freehold, and the mortgage passing it does not require registration.

Longbottom v. *Berry.* 5 L.R., Q.B., 128 followed.
Sheffield and S. Yorkshire Permanent Building Society v. *Harrison.* 54 L.J., Q.B., 15; 33 W.R. 144.

Certain instruments giving powers of distress to be subject to this Act.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a Bill of Sale within the meaning of this Act of any personal chattels which may be seized or taken under such power of distress.

Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

These instruments subject to Act, 1882.

To all the above instruments the Act 1882 applies: they are mortgage Bills of Sale, and unless they follow the form in the schedule of that Act they will be void under sect. 9. They must also comply with the other provisions of the Acts. The proviso in the sub-section, however, is unrepealed, and therefore such mortgages as it relates to are still excluded from the operation of the Acts.

Fixtures or growing crops to be deemed separately assigned when the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they

are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

Separately assigned or charged.

This rule of construction as to the separate assigning or charging of fixtures or growing crops should be referred to in considering sec. 4, Act, 1878, and sec. 6, 1882.

Growing and severed crops.

The Act only requires *growing* crops to be separately assigned to make them personal chattels. Crops when severed are personal chattels, whether separately assigned or not, and Bills of Sale upon them are within the Acts, and must fulfil the requirements of those statutes. Assignments of growing crops not separately assigned or charged are not Bills of Sale.

Bill of Sale to have schedul of property attached thereto.

4. Every Bill of Sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the Bill of Sale, and such Bill of Sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule, and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Schedule.

The schedule must contain such an inventory as is usual in business. The classes of articles described in it must be separated one from another. It need not, however, contain a detailed description of each article. A schedule containing the following inventory—"Household furniture and effects, implements of husbandry"—was held bad, and the Bill of Sale containing it insufficient to pass the property in the goods.

Roberts v. *Roberts.* 13 Q.B.D., 794; 53 L.J., Q.B (App.) 313.

Omission to specify the house or place where chattels lie.

The omission to specify the house or place in which the chattels lie in the schedule does not invalidate a Bill of Sale.

Ex parte Hill in re Lane, 17 Q.B.D., 74.

Bill of Sale not to affect after acquired property.

5. Save as hereinafter mentioned, a Bill of Sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto, of which the grantor was not the true owner at the time of the execution of the Bill of Sale.

Exception as to certain things.

6. Nothing contained in the foregoing sections of this Act shall render a Bill of Sale void in respect of any of the following things (that is to say):

(1) Any growing crops separately assigned or charged, where such crops were actually growing at the time when the Bill of Sale was executed.

(2) Any fixtures separately assigned or charged, and any plant or trade machinery, where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such Bill of Sale.

Chattels not specifically described in schedule and after acquired (sects. 4 and 5).

If personal chattels are not specifically described in the schedule (according to section 4, 1882) of a Bill of Sale, or if the chattels so described are not in the true ownership of the grantor at the time of the execution of the Bill, the Bill (excepting in the cases reserved by section 6, 1882) will be void in respect of such chattels, excepting as against the grantor. It must be observed that the Acts only apply to "personal chattels," as defined by section 4 of the Act 1878. Choses in action, therefore, are not within these sections, and consequently an assignment to pass future book debts is valid, and operates to pass the beneficial interest in a debt which may come into existence after the assignment.

Books debts and future book debts.

Official Receiver v. Tailby. 17 Q.B.D., 88.

Book debts must be specifically assigned.

Book debts are not assigned by a general assignment of stock-in-trade, &c. (*Brown v. Fryer.* 46 L.T., 636); but plant and trade machinery, as defined by section 7, Act 1878, and fixtures, when separately assigned according to section 7, 1878, are assignable by Bill of Sale, notwithstanding that they are not specifically described in the schedule, provided they are brought upon the premises in substitution for any of the like plant, trade machinery, or fixtures which have been specifically described in the schedule of a Bill of Sale. Growing crops also, when separately assigned (see section 7, 1878) are exempted from sections 4 and 5, and are assignable by Bill of Sale.

Fixtures and growing crops.

After acquired property.

A Bill of Sale assigning property to be afterwards acquired

confers only an equitable title on the grantee, who cannot, by taking possession under the Bill of Sale, oust a legal title which has been acquired without notice of the Bill of Sale and before possession has been taken by the grantee.

Hallas v. *Robinson.* 54, L.J., C.L., 364.
Joseph v. *Lyons* followed.

The equitable title acquired from a Bill of Sale granting after acquired property by the grantee, gives way to a legal title acquired without notice of the Bill of Sale. A pledgee, therefore, of goods which are subject to an assignment, as after acquired property under a Bill of Sale, who has no notice of the Bill of Sale, has a good title against the Bill of Sale holder.

Joseph v. *Lyons.* 54, L.J., C.L., 1.

Bill of sale granting subsequently acquired property only bad in such respect against third parties.

When a Bill of Sale grants after acquired property it is in such respect good against the grantor, but not against third parties. It is only void, however, as regards the after acquired goods. *Roberts v. Roberts.* 13, Q.B.D., 794; 53, L.J., Q.B., 313.

Building agreements.

These sections do not apply to building agreements, which are *sui generis* and outside the Bills of Sale Acts. (See under section 4, Act 1878, above.)

Sects. 4 and 5, 1882, apply only to mortgage Bills of Sale.

It must be remembered that the above sects. 4 and 5, 1882, regarding the assignment of chattels not specifically described, or of which the grantee is not the true owner at the time of taking the Bill of Sale, only apply when the Bill is a mortgage Bill of Sale.

Avoidance of unregistered Bill of Sale in certain cases.

8. Every Bill of Sale to which this Act applies shall be duly attested, and shall be registered under this Act within seven days after the making or giving thereof, and shall set forth the consideration for which such Bill of Sale was given, otherwise such Bill of Sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such Bill of Sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriff's officers and other persons seizing any chattels comprised in such Bill of Sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such Bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels

[15. The eighth and twentieth sections of the principal Act . . . are repealed.]

comprised in such Bill of Sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such Bill of Sale (or of any person against whom the process has issued under or in the execution of which such Bill has been made or given, as the case may be).

Extent of repeal.

This section is only repealed so far as mortgage Bills of Sale are concerned.

Robinson v. *Tucker.* 1 C. and E., 173.
Gibbons v. *Hickson.* 55 L.J., Q.B., 119.

As to apparent possession. See *ante*, p. 8.

As regards mortgage Bills of Sale the clause is specifically repealed. If a mortgage Bill is not registered, and does not comply, as regards form and every other particular, with the requirements of the Act of 1882, it is void, not merely as against the persons specially named in this section, but also as against the grantor.

The repeal does not affect anything done or suffered under the principal Act before the commencement of the Act of 1882 (1st November, 1882).

Extent of avoidance for want of registration.

The effect of this section (8, 1878) in avoiding an unregistered Bill of Sale as against an execution creditor of the grantor is to avoid it only to the extent necessary to satisfy the execution creditor.

(*Richards v. James.* L.R., 2, Q.B., 285, distinguished on the ground of the different words used in 1854 and 1878 Acts).

Effect of grantee's taking possession after execution and before bankruptcy, and execution then avoided by antecedent act of bankruptcy.

If, after the sheriff, under an execution, has seized the goods comprised in an unregistered Bill of Sale to which the Act of 1878 applies, the Bill of Sale holder takes a sufficient possession before the filing of a bankruptcy petition on which the grantor is afterwards adjudicated a bankrupt, and the execution is then avoided by virtue of the relation back of the trustee in the bankruptcy to an act of bankruptcy before the levy of the execution, the execution is swept away as if it never existed, and the Bill of Sale holder is entitled to the goods as against the trustee.

Ex parte Blaiberg in re Toomer. 23 Ch. D., 254.

Cookson v. Swire

Cookson v. *Swire* (9 app. cases 653, 54, L.J., C.L., 249) decided by the House of Lords in an important case under this section. A Bill of Sale of household furniture was granted in 1873 to the respondent, and duly registered, but the registration was not renewed. The debtor remained in apparent possession of

the goods. In 1883, after an action had been commenced by the appellants against the debtor, the respondents, with a view to protecting the goods from seizure in execution, sold the goods to the debtor's son, who executed to them a new Bill of Sale as security for the purchase money, £250. This bill was registered under the Act of 1882. The appellants obtained judgment against the debtor, and levied execution on the goods, whereupon the respondents claimed the goods, and the sheriff interpleaded. On the trial of an interpleader issue the jury found that the transactions between the respondents and the debtor's son were *bonâ fide*.

It was held that the Acts of 1878 and 1882 never applied to the Bill of Sale of 1873, which was, therefore, valid as against the grantor, under the Acts of 1854 and 1866, notwithstanding non-renewal of registration at the time of the sale to the debtor's son, and that as there was no execution creditor or other person then entitled to the goods, the exercise of the power of sale put an end to the original Bill, and conferred an absolute title on the purchasers.

Apparent possession.

It was, therefore, held that whether the goods were in the apparent possession of the debtor or not at the time of the execution, the respondents had a good right to them as against the appellants.

Effects of Sect. 8, 1878.

Under this section, which now does not apply to mortgage Bills, except probably debentures,* every Bill of Sale must—

a. Be duly attested.
b. Be registered within 7 days. } See sect. 10, 1878, which prescribes the manner of attestation and registration.
c. Duly set forth the consideration for which it was given.

If these three conditions are not duly complied with, the Bill of Sale as against (1) trustees or assignees in bankruptcy or liquidation, (2) sheriffs' officers and other persons seizing chattels comprised therein, and (3) all persons on whose behalf process of execution shall have been issued, is void so far as regards those chattels comprised in it which remain in the apparent possession "of the person making the bill of sale, or of any person against whom the process has issued under or in the execution of which such Bill has been made or given, as the case may be."

Attestation and registration.

Section 10 of Act 1878 deals with the manner of attestation and registration of bills other than mortgage Bills of Sale.

Consideration.

Consideration will be treated under sect. 8 of the Act 1882.

Debentures.

The term liquidation only refers to the liquidation of the affairs of an individual, and not to the winding up of a company. Debentures are not, therefore, void against a liquidator for want of registration, but retain their priority.

In re Asphaltic Wooden Pavement Co. 49 L.T., 159; 32 W.R., 16.

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*See note to Sect. 17, Act 1882.

7. Personal chattels assigned under a Bill of Sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

Bill of Sale with power to seize except in certain events to be void.

(1) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time[1] therein provided for payment, or in the performance of any covenant or agreement contained in the Bill of Sale and necessary for maintaining the security.[2]

(2) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes.

(3) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises.

(4) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee produce to him his last receipts for rent, rates and taxes.

(5) If execution shall have been levied against the goods of the grantor under any judgment at law.

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above mentioned causes apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause or seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Time of payment.

(1) There must be a stipulated time for payment in every mortgage Bill of Sale. The form in the schedule which must, according to section 9, be followed, runs : "And the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due by equal payments of £ on the day of or whatever else may be the stipulated time or times of payment."

If there is in the Bill no fixed day or days for payment, the Bill will not be substantially in accord with the form in the schedule, or fulfil the requirements of this section.

Melville v. *Stringer.* App. reversing Q.B.D. 13 Q.B.D., 392; 53 L.J., Q.B., 482.

Bishop and Sons v. *Beale.* 1 *Times* L.R., 140.

Payment on "demand" renders Bill void.

A Bill of Sale made after the passing of the Bills of Sale Act, 1882, contained an agreement by the mortgagor that he would, upon demand in writing, pay to the mortgagee the principal sum and interest; and that it should be lawful for the mortgagee to enter upon the premises where the assigned effects might be, to seize and sell the same if the mortgagor should make default in payment on such demand being made, or if any of the contingencies mentioned in section 7 (Act 1882), sub-sections 2, 3, 4, or 5, if the Act should happen and provided that the effects assigned should not be liable to seizure for any cause other than those mentioned in section 7, Act 1882. It was held that the Bill of Sale was void because it gave a power to seize in default of payment on demand, and not as required by section 7 and the schedule of the Act, at a time therein provided or stipulated for payment.

Hetherington v. *Groome.* 13 Q.B.D., 789; 53 L.J., Q.B., 576.

By a Bill of Sale the grantor agreed that if he should not duly pay his creditors a certain instalment of a composition on the 24th day of May, 1883, and the grantee should, under a guaranty given by him, be obliged to pay the same, he (the grantor) would repay that sum to the grantee within seven days after a demand and a power of seizure in default was given. Held that the Bill of Sale was void as not being in accordance with the form in the schedule.

Sibley v. *Higgs.* 54 L.J., Q.B., 525; 15 Q.B.D., 619; *Hetherington* v. *Groome*, cited.

A somewhat different decision was, however, given in the case of *Hughes* v. *Little*, p. 34, which is on its way to the Court of Appeal.

What covenants allowed.

(2) Covenants and agreements which are strictly necessary for the purpose of the maintenance and defeasance of the security do not render a Bill of Sale void. Covenants allowing seizure for the causes specified in sect. 7 must be inserted. The Act must be read together with the schedule, and the words of the schedule are "(here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeasance of the security)."

The ordinary covenant for further assurance is permissible in a Bill of Sale, but it must not vary from the ordinary form.

See p. 38 *ex parte Rawlings* re. *Cleaver.*

grantor Insurance.

A Bill of Sale given to secure a debt of the grantee contained a covenant by the ~~grantee~~ to insure and keep insured the chattels assigned in a sum equal to the sum secured, and forthwith, after every payment of premiums, to produce and if required, deliver to the grantee the receipt, and a clause empowering the grantee, subject to the Bills of Sale Act, 1882, to seize the chattels on breach, held that the Bill of Sale was not void under the Act of 1882, s. 9. Leave to appeal was refused.

Hammond v. *Hocking.* 12 Q.B.D., 291; 53 L.J., Q.B., 205.

Another Bill of Sale contained covenants on the part of the mortgagee to replace such of the goods comprised in it as should become worn out, and gave power to the mortgagee after seizure and sale to retain the costs of discharging incumbrances, and of the removal, warehousing, or retaining the goods, or in valuing them, and in the sale thereof. Held that the terms of the Bill of Sale were substantially in accordance with the form given in the schedule.*

Power to retain costs of defeasance after seizure and sale, and to retain costs of discharging incumbrances.

Consolidated Credit and Mortgage Company v. *Gosney.*
16 Q.B.D., 24.; 55 L.J., C.L., 61.

But where a Bill of Sale contained a provision for seizure if the mortgagee should do or suffer any matter or thing whereby he shall render himself liable to become a bankrupt, instead of "became a bankrupt," as in the section of this Act, or if the receipts for rent, rates, and taxes were not produced "forthwith," instead of "on demand in writing by the grantee," and upon removing the chattels, and not "fraudulently removing," as in the section, and also in case "execution shall be or shall have been levied," instead of "if execution shall have been levied," the Bill of Sale was held void *inter alia* for giving a power of seizure in other cases than those mentioned in the section of the Act. Moreover, it was decided that the final proviso in the Bill of Sale "that the chattels thereby assigned should not be liable to seizure or to be taken possession of for any cause other than those expressed in section 7 of the Act, did not save the bill from avoidance for the above cause.

In re Williams, ex parte Pearce, 25, Ch.D. 656.

But where the deed empowered the grantee to seize the property (*inter alia*) in case the grantor should do or suffer any matter or thing whereby he should become a bankrupt, it was held that the Bill of Sale was good, as the event specified was equivalent to the event "shall become bankrupt" in section 7.

Ex parte Allam in re Munday, 14 Q.B.D. 43.

Five clear days must be allowed to elapse after seizure before chattels seized under a Bill of Sale are sold, and it is necessary so to state the time of sale in each Bill of Sale. Any provision contained in a Bill of Sale, which is contrary to this rule (section 13, Act 1882), will render a Bill of Sale void.

Five days must elapse between seizure and sale.

Brett, M.R. in *Hetherington* v. *Groome.*

If a reasonable excuse is offered for not producing the receipts for rent, &c., the grantee is not entitled to seize. Where the grantor of a Bill of Sale did not upon demand in writing by the grantee produce a receipt for rent which had only become due,

Reasonable excuse.

* But where a Bill of Sale contained a covenant by the mortgagor not to permit the chattels scheduled to be destroyed or injured or deteriorated and to make good any damage, &c., forthwith, and a power to seize on default by the mortgagor in the performance of the covenants, all of which where declared and agreed to be necessary for the maintenance of the security, it was held that the covenant was not one necessary for maintaining the security, and that the Bill of Sale was void; and further that no agreement between the parties should override the statute.

Furber v. *Cobb.* 2 Times L.R. 873.

a few days, and of which it appeared the landlord had not yet required payment, it was held that this was a reasonable excuse.

Ex parte Cotton 11, Q.B.D., 301; 49 L.T. 52.)

Restrained by court.

And it was held in the same case that under such circumstances the Court could restrain the sale of the chattels.

Covenant giving power to break into premises.

A covenant giving power to break into premises by force does not invalidate a Bill of Sale.

Lumley v. *Simmons.* W. N., August 14th, 1886.

Avoidance of certain duplicate Bills of Sale.

9. Where a subsequent Bill of Sale is executed within or on the expiration of seven days after the execution of a prior unregistered Bill of Sale, and comprises all or any part of the personal chattels comprised in such prior Bill of Sale, then, if such subsequent Bill of Sale is given as a security for the same debt as is secured by the prior Bill of Sale or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior Bill, be absolutely void, unless it is proved, to the satisfaction of the court having cognisance of the case, that the subsequent Bill of Sale was *bonâ fide* given for the purpose of correcting some material error in the prior Bill of Sale, and not for the purpose of evading this Act.

Application of section.

The section was aimed at the practice of avoiding the necessity to register Bills of Sale and the publicity such registration involved by making a series of Bills of Sale, some of which never became void for want of registration within seven days, for before a Bill could become so void by lapse of time another Bill had taken its place. The section only applied, therefore, to a new Bill of Sale made within the seven days—that is, before the time allowed for registration has elapsed. It does not invalidate Bills of Sale made more than seven days after other Bills of Sale of the same chattels had been executed. On the same principle, the section excepts from its operation a Bill of Sale made in place of a previous Bill of Sale, although within the seven days, when the court can be satisfied that the new Bill was executed, not for the purpose of avoiding the Act, but for the correction of a material error in the previous Bill.

Canard v. *Meek.* 50 L.J., Q.B., 157; 43 L.T., 760.

10. A Bill of Sale shall be attested and registered under this Act in the following manner:

8. Every Bill of Sale shall be duly attested, and shall be registered under the principal

Bill of Sale to be void unless attested and registered.

Mode o registering Bills of Sale

(1) The execution of every Bill of Sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the Bill of Sale the effect thereof has been explained to the grantor by the attesting solicitor. [Repealed as regards mortgage Bills of Sale, by sec. 10, Act 1882]

(2) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every schedule or inventory, and of every attestation of the execution of such Bill of Sale, together with an affidavit of the time of such Bill of Sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such Bill of Sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such Bill of Sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required te be filed :

Cond tion or defeasance.

(3) If the Bill of Sale is made or given, subject to any defeasance, or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part hereof, otherwise the registration shall be void. In case two or more Bills of Sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels. A transfer or assignment of a registered Bill of Sale need not be registered.

Priority.

Act within seven clear days after the execution thereof, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof ; and shall truly set forth the consideration for which it was given ; otherwise such Bill of Sale shall be void in respect of the personal chattels comprised therein.

Attestation.

10. The execution of every Bill of Sale by the grantor shall be attested by one or more credible witness or witnesses not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every Bill of Sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the Bill of Sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Renewal of Registration.

11. The registration of a Bill of Sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a Bill of Sale without a renewal or further renewal (as the case may be) the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the Bill of Sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the Bill of Sale is still a subsisting security.

Every such affidavit may be in the form set forth in the schedule (A) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a Bill of Sale.

Attestation by a Solicitor.

This subsection, which requires a Bill of Sale to be attested by a solicitor, and a statement in such attestation that such attesting solicitor has explained the purport of the Bill to the grantor, has been repealed by section 10 of the Act of 1882.

Still required in absolute Bills of Sale.

But as that Act only relates to Mortgage Bills of Sale (sec. 3, subsection 2, Act 1882), the subsection still remains in force as regards Bills of Sale given otherwise than by way of security for the payment of money.

Casson v. *Churchley.* 53 L.J., Q.B., 335.

Attestation 1882).

The execution of a mortgage Bill of Sale must now be attested by one or more credible witness or witnesses not being party or parties to the Bill.

Registration.

The Bill of Sale having been duly attested must now be registered. Bills coming under the provisions of the 1878 Act will be void for want of proper attestation and registration in the cases provided by section 8 (Act 1878). Mortgage Bills of Sale, being under the Amendment Act, if they are not so attested and registered, are void altogether, even against the grantor.

It will perhaps simplify the provisions of the Acts as regards attestation and registration if such provisions are tabulated.

Bills of Sale still under Act 1878.	Bills of Sale under Act 1882.
Attestation. 1. Attestation and declaration by a solicitor.	Attestation by a credible witness or by witnesses not being parties to the Bill.
Under Both Acts.	

Every Bill of Sale must be filed with the registrar within seven clear days after execution, and there must be also lodged with him at the same time— Registration.

1. The original Bill of Sale, together with every schedule or inventory annexed or therein referred to.

2. A true copy of the Bill of Sale, together with all inventories annexed or therein referred to and of every attestation of its execution.

3. An affidavit sworn as to—

(*a*) The time when the Bill *was made* or *given*.

(*b*) Its due execution and attestation.

(*c*) The description of the residence and occupation of the party making or giving the Bill of Sale.

(*d*) The name or names of the attesting witness or witnesses, with a description of their residence and occupation.

Date. Clerical error.

The affidavit filed with a Bill of Sale stating that the Bill of Sale was executed "on the day of which the same bears date," and in another part stating the day with a clerical error in substituting 1806 for 1876, is a sufficient affidavit.

Lamb v. *Bruce*. 45 L.J., Q.B., 538.

The date is to be the date of the execution of the Bill of Sale.

The maker of the affidavit must swear in his affidavit that he was present when the Bill was executed and attested.

Ford v. *Kettle*. 9 Q.B.D., 139.

Residence of witness in affidavit.

When an affidavit of execution and attestation filed upon the registering of a Bill of Sale was made by the attesting witness to the Bill, and a description of the residence of the deponent was contained in the introduction to the affidavit, and was the same as the residence of the attesting witness in the attestation clause of the Bill of Sale, but was omitted in the body of the affidavit, it was held that such description was sufficient.

Blaiberg v. *Parke*. 10 Q.B.D., 90; 52 L.J., Q.B., 110.

Ex parte Bolland in re Roper. 52 L.J., Ch. 113; 21 Ch. D., 543.

Description of residence and occupation of parties and witness.

The description of the residence and occupation of the grantor and of the attesting witness, must be clear and unmistakable, otherwise the bill will be void. What is a sufficient and proper description can best be gathered from the cases: E. W., of W. S. Street, N.S., in the county of N.A., a widow about to remove to the E. U. Hotel, N.S., aforesaid, was held sufficient, as the woman, who had been a licensed victualler, had gone out of business about a month previously, and might or might not carry out her intention of taking the hotel named.

Wolfe or *Chapman*, *ex parte Davey*. 44 L.T., 321; *affirmed*, 45 L.T., 268.

The proprietor of a travelling circus, which was then at Southampton, granted a Bill of Sale in which he was described as T. B., of No. 9, Ponton Terrace, Nine Elms, in the county of Surrey, but now carrying on business at Bar Street, in the town and county of Southampton, and lodging at No. 3,

Weymouth Terrace, in the said town of Southampton, circus proprietor, and in the affidavit it was stated that "T. B. at present resides at 3, Weymouth Terrace, and carries on business at Bar Street, in the town of Southampton, and has a permanent residence at 3, Ponton Terrace, Nine Elms, in the county of Surrey." Though for six years he had not occupied the house at Nine Elms, which he had lent to his brother-in-law, it was held that the description was sufficient.

Cooper v. *Ibberson—Cooper* v. *Warnlow.* 44 L.T., 309; 29 W.R., 566.

But when the grantor was described in the affidavit as "carrying on business as a wine and spirit merchant and dealer in provisions and other goods at ——— L., under the style of the L. and W. Supply Association," but was in fact only the salaried manager of such business, of which he had been formerly the proprietor, it was held that the description was not truly stated. *Cooper* v. *Davis.* 48 L.T., 831; 31 W.R., 721.

The description Walter Neve, of Luton, in the county of Bedford, was held sufficient.

Ex parte Webster in re Morris. 22 Ch. D., 136; 52 L.J., Ch. 375.

Misdescription of what is immaterial does not void registration.

A Bill of Sale and the affidavit filed on its registration described the grantors (who were father and son) by their true addresses, and added that they were mantle manufacturers, carrying on business together as a specified firm. They had, in fact, formerly carried on the business in partnership, but at the time when the Bill of Sale was executed the partnership had been dissolved, and the business was being carried on by the father alone, the son being in his employment as a clerk. The property comprised in the deed, in fact, belonged to the father alone; though both father and son joined in the deed, the father alone filed a liquidation petition. Held that there was no misdescription of the grantors such as to affect the validity of the registration; (1) because the son not being a bankrupt any misdescription of him was immaterial; (2) because as to the father the statement that he was carrying on business with the son was surplusage and was not misleading.

Ex parte Popplewell in re Storey. 21 Ch.D., 73; 52 L.J., Ch. 39.

If residence of grantor changed between execution and filing of Bill description of same address in affidavit not bad.

The description of the residence of the grantor of a Bill of Sale will not be held incorrect so far as to invalidate registration on the ground that the grantor was therein described in the same manner as in the Bill of Sale, notwithstanding that at the time of the filing of such affidavit the person making it was aware that the grantor had absconded.

Kahen ex parte Hewer. 21 Ch.D., 871; 51 L.J., Ch. 904; 46 L.T., 856; 30 W.R., 954.

Description in reregistration.

When a Bill of Sale is reregistered under sec. 11, Act 1878 (renewal of registration), the affidavit must set forth the names and addresses of the parties as in the Bill of Sale, otherwise such description may be bad, notwithstanding that the address on

the Bill of Sale was not the true one, and that on the renewal it had been truly stated.

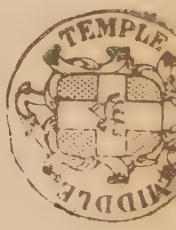
Ex parte Webster re Morris. 22 Ch.D. 136; 52 L.J., Ch. 375; 48 L.T., 295.

The lessee and manager of a theatre, who occasionally acted there himself, though not under any acting engagement, was described in a Bill of Sale, and in the affidavit filed at the registry by his full names, his private dwelling-house, and as "esquire." Held that his occupation was not described so as to satisfy the statute.

Homann, ex parte, Vining, in re. 10 L.R., Ex. 63; 39 L.J., Bk. 4; 22 L.T., 179; 18 W.R., 450.

In an affidavit of the execution of a Bill of Sale the maker was described as "government clerk;" he was a clerk in the Admiralty. Held that the description was sufficient.

Grant v. *Shaw.* 7 L.R., Q.B., 700; 41 L.J., Q.B., 305; 27 L.T., 602.



The affidavit filed with a registered Bill of Sale stated that the grantor "was until lately" a commercial traveller. It appeared that the grantor was a commercial traveller at the date of the execution of the Bill of Sale. Held that the description of his occupation was insufficient to satisfy the provisions of 17 and 18 Vict., c. 36, s. 1.

Castle v. *Downton.* 5 C.P.D. 56; 49 L.J., C.P., 6; 41 L.T., 528; 28 W.R., 257.

The grantor of a Bill of Sale was described in the affidavit filed under the Bills of Sale Act as an "accountant." He was, in fact, a clerk in the accountant's department at the Euston Square Station of the London and North-Western Railway Company, but in his leisure time was occasionally employed to balance tradesmen's books. Held an insufficient description.

Larchin v. *North-Western Deposit Bank.* 10 L.R., Ex. 64; 44 L.J., Ex. 71; 33 L.T. 124; 23 W.R. 325.

Variation between the Christian names of a grantor in the bill itself and affidavit.

A variation between one of the Christian names of a grantor of a Bill of Sale in the Bill itself, and in the accompanying affidavit, which cannot mislead, is immaterial.

Corbett v. *Rowe.* 25 W.R., 59.

W. carried on business as a foreman tailor's cutter, and his wife kept a school and took in boarders at the house in which she and her husband lived. He borrowed £50 upon the furniture in the house, to secure which he executed a Bill of Sale, wherein he was described as a foreman tailor's cutter, no mention being made of the school. Held that the description was sufficient and the registration valid.

National Deposit Bank, ex parte Willis, in re. 26 W.R., 624—C.A. Reversing the decision of Bacon (C.J.), 38 L.T. 264; 26 W.R. 375.

The grantor of a Bill of Sale was therein correctly described as of "No. 37, Malpas Road, Deptford, in the county of Kent," and the attesting witness to such Bill of Sale was therein also

correctly stated to be of "No. 2, South Terrace, Hatcham Park Road, New Cross." In the affidavit, however, which was filed with a copy of the Bill of Sale, the residence of the grantor was described as "No. 73, Malpas Road, Deptford, in the county of Kent," and the residence of the attesting witness was described as "3, South Terrace, Hatcham Park Road, New Cross." Held that there was not a true description of residence of the grantor and attesting witness thereto filed as required by the Bills of Sale Act, 1854.

Murray v. *Mackenzie.* 10 L.R., C.P., 625; 44 L.J., C.P., 313; 32 L.T., 777; 23 W.R., 595.

Fault in Affidavit cured by the Bill of Sale itself.

In an affidavit filed with a copy of a Bill of Sale the deponent stated "that the paper writing annexed is a true copy of a Bill of Sale made by Isaac Anthony," and "that Isaac Anthony resides at Dynevor Lodge, and is an auctioneer." By the copy of the Bill of Sale annexed to the affidavit, Isaac Anthony was described as "of Dynevor Lodge, in the parish of Llanarthney, in the county of Caermarthen, auctioneer," which was the true residence. Held that the description in the affidavit of the residence of the person making the Bill of Sale was not sufficient, but that the copy of the Bill of Sale, in which the situation of the residence was stated with particularity enough to guide any inquiry as to the identity of the individual, might be referred to, in order to explain and supplement the description given by the affidavit; and that, therefore, the provisions of the 17 and 18 Vict., c. 36, s. 1, were satisfied.

Jones v. *Harris.* 7 L.R., Q.B., 157; 41 L.J., Q.B., 6; 25 L.T., 702; 20 W.R., 143.

Misdescription of residence of grantor.

A farmer, whose real name was Joseph Wood, but who had assumed the name of Joseph Albert Wood, and had become known to his creditors by that name, executed a Bill of Sale in which he was described as "Joseph Wood, of Lache Hall Farm, in the county of Chester, farmer." The same name and description were given in the affidavit filed on the registration of the Bill of Sale. Lache Hall Farm was situate a short distance outside Chester, not in the county of Chester. It did not appear that there was any other farm of the same name in the county of Chester. Held by the Chief Judge and the Court of Appeal that the registration was valid.

McHattie ex parte Wood, in re. 10 Ch.D. 398; 48 L.J., Bk. 26; 39 L.T., 373; 27 W.R., 327—C.A.

Change of residence by maker between execution and registration.

The "description of the residence" of the maker of a Bill of Sale, required by the Bills of Sale Act, 1854, s. 1, to be stated in the affidavit filed therewith, must be his residence at time of swearing the affidavit, and not of executing the Bill of Sale. *

Button v. *O'Neill.* 4 C.P.D., 354; 48 L.J., C.P. 368; 40 L.T., 799; 27 W.R., 592—C.A.

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* But see also *Kaben ex parte Hewer*, p. 24. and *ex parte Webster re Morris*, p. 25.

In a Bill of Sale given to Gardnor such name was correctly spelt; but in the copy which was filed it was erroneously spelt as Gardner. Held that the error being merely clerical, and not calculated to mislead, it was immaterial, and did not vitiate the Bill of Sale. Grantee, description of. Clerical error.

Gardnor v. *Shaw.* 24 L.T., 319; 19 W.R., 753.

The affidavit filed with a Bill of Sale must give, either directly or by reference to the Bill of Sale, a description of the residence and occupation of the attesting witness at the time of his attesting a Bill of Sale.

Brodrick v. *Scalé.* 6 L.R., C.P., 98; 40 L.J., C.P., 130; 23 L.T., 864; 19 W.R., 386.

Therefore, where the witness was described in the attestation as "clerk to a solicitor," but in the affidavit he was described as being then "a gentleman," without any statement that the description of him in the attestation to the Bill of Sale was true, held that the statute had not been complied with. *Ib.*

"Law clerk, Carlow, in the county of Carlow," is a sufficient description of an attesting witness to a Bill of Sale.

McCue v. *James.* 19 W.R., 158.

"Insurance clerk" is a sufficient description of the occupation of an attesting witness.

Grant v. *Shaw.* 7 L.R., Q.B., 700; 41 L.J., Q.B., 305; 27 L.T., 602.

An insufficient description of an attesting witness to a Bill of Sale, contained in his affidavit, registered therewith, may be cured by reference to a sufficient description of him in the attestation clause of the Bill of Sale.

Mackenzie, ex parte, Bent, in re. 42 L.J., Bk. 25; 28 L.T., 486.

An attesting witness to a Bill of Sale was described in the affidavit as "gentleman." He had been a proctor's managing clerk, but had ceased to be so for six years. Since that time he had lived on an allowance from his mother, and had, on a few occasions, collected debts and written letters for other persons, and had drawn four Bills of Sale, but he had no regular occupation. Held that the description "gentleman" was sufficient. *Smith* v. *Cheese.* 1 C.P.D., 60; 45 L.J., C.P., 156; 33 L.T., 670; 42 W.R., 368.

An affidavit describing an attesting witness to the Bill of Sale, who was a clerk in a bank, as a "clerk" is a sufficient description of his occupation.

Lamb v. *Bruce.* 45 L.J., Q.B., 538; 35 L.T., 425; 24 W.R., 645.

The registration of a Bill of Sale, the execution of which has been attested by two witnesses, will be invalid unless the affidavit filed with the copy of the Bill of Sale contains a description of both witnesses.

Pickard v. *Marriage.* 1 Ex. D., 364; 45 L.J., Ex. 594; 35 L.T., 343; 24 W.R., 886.

An attestation to a Bill of Sale correctly described the

witness as "solicitor, Bloomfield Street, in the city of London," proceeded to state that he resided at "Grove House, Acton, in the city of London." His residence was, in fact, at Grove House, Acton, Middlesex. There were three places called Acton in England, none of them being in the city of London. Held a sufficient description of the residence of the attesting witness, it being one which, though inaccurate, would, coupled with the description in the Bill of Sale, enable a person of ordinary intelligence to conclude that the suburban Acton must be the place of residence of a solicitor carrying on business in the city of London.

Blount v. *Harris.* 47 L.J., Q.B., 596. Affirmed on appeal, 4, Q.B.D. 603; 48 L.J., Q.B., 159; 39 L.T., 465; 27 W.R., 202, C.A.

Making false oath.

A false oath sworn in an affidavit for the purpose of procuring the registration of a Bill of Sale is a misdemeanour at common law. *Reg.* v. *Hodgkiss.* 11 Cox. C.C., 365.

Parol agreement for Bill of Sale need not be registered.

A *parol* agreement for a Bill of Sale does not require registration under Act 1878, and a Bill of Sale given in pursuance of such agreement is not void under the Act for the non-registration of the agreement.

Ex parte Hauxwell in re Hemmingway. 23 Ch. Div., 626; 52 L.J., Ch. 737; 48 L.T., 762; 31 W.R., 711. (Appeal.)

Renewal of registration.

Sect. 11, Act 1878, requires every Bill of Sale to be registered at least once in five years, and the affidavit must be in the form given in the schedule of the Act 1878.

The affidavit made on reregistration must state the residence of the grantor as it is stated in the Bill of Sale, even if such statement is erroneous.

Ex parte Webster re Morris. 22 Ch.D., 136; 52 L.J., Ch. 375; 41 L.T., 295.

When grantee has assigned his interest.

Renewal of registration is necessary, although before the time allowed for reregistration the grantee has assigned his interest. The assignee otherwise has no title against an execution creditor. *Karet* v. *Kosher Meat Co.* 2 Q.B.D., 361; 46 L.J., Q.B., 548.

Consideration.

By sect. 8, Act 1878, and sect. 8, Act of 1882, every Bill of Sale must set out the true consideration for which it is given. If a Bill of Sale of personal chattels fails to do so it is, if coming under the Act of 1878, void against certain persons, and if it is a mortgage Bill, and therefore coming under the Amendment Act, it is void altogether.

Under £30.

By sect. 12 of the Act of 1882 every mortgage Bill made for a consideration of less than £30 shall be void.

Statement of consideration must be substantially accurate.

The statement of consideration must be substantially accurate, but all the collateral circumstances need not be set out. Where, for instance, a Bill of Sale stated the consideration to be £2,000, and that it had been paid immediately before the execution of the deed, whereas the Bill was, in fact, given as part payment of £2,500 purchase money of a brewery, and the

grantor of the Bill of Sale had, as such payment, given in cash £500 and the Bill of Sale for the balance of the money, the statement of consideration was held to be sufficient.

Ex parte Bolland in re Roper. 21 Ch.Div., 543; 52 L.J., Ch., 113; 47 L.T., 488; 31 W.R., 102. (Court of Appeal.)

Again, where Mrs. S. agreed to purchase the furniture and lease of 39, Bryanston-street for £600, to be paid £60 as a deposit, £40 on completion of the purchase, and the remainder with interest, at 5 per cent, by instalments extending over two years; it was agreed also that the vendor should have the right "to have further secured the balance of the aforesaid purchase-money by mortgage Bill of Sale or otherwise upon the said furniture" until payment of all the instalments with interest. Mrs. S. paid the sums of £60 and £40, and went into possession and executed the Bill of Sale in question. The Bill of Sale did not refer to the agreement, but provided for the payment of £500, with interest at 5 per cent, by instalments extending over two years. The only reference to the consideration was contained in the words, this indenture "witnesseth that in consideration of £500 now paid to the said S. S., the receipt of which she the said S. S. hereby acknowledges," excepting the £60 and £40 above mentioned, and one instalment paid subsequently by Mrs. S. no money, in fact, passed. Mr. Justice Wills held that the Bill of Sale did not "truly set forth the consideration," and was therefore void, but this decision was reversed in Q.B. Div. (Matthew and A. L. Smith, J.J.) and (*ex parte* Bolland, cited), the Bill held to be good, the statement of consideration satisfying sect. 8 of the Act 1882.

Stanniforth v. *Capon.* 2 *Times* L.R., 493.

£30 consideration, £15 immediately return

When A. had applied to B. for the loan of £15 and on the security of his furniture, and B. had pointed out that by the Act of 1882 a Bill of Sale made for a less consideration than £30 was void, it was consequently agreed that B. should advance £30 and that £15 of that sum should be payable by A. on demand. The £30 was upon the execution of the Bill duly paid by B., who then, on the suggestion of A., immediately demanded and received the £15. Held that in the absence of evidence that the transaction was a sham, that the Bill of Sale was valid. *Davis* v. *Usher.* 12 Q.B.D., 490; 53 L.J., Q.B., 422.

Since the judgment in *Melville* v. *Stringer*, *Hetherington* v. *Groome*, and *Sibley* v. *Higgs*, however, the above Bill would probably be held bad for want of compliance with the form in the schedule of the Act of 1882, part of the money being payable on demand—a material variation from the statutory form.

A Bill of Sale was given to secure an actual advance of £1,500 on the 12th of February, and when it was found to contain clauses which would make it void, another Bill was consequently executed on the 16th of February in the place of it. The consideration was held to be truly stated in the new

Bill, although it contained nothing to show that it was given in place of the cancelled Bill, but professed to be given in consideration of £1,500 now paid. It was distinctly held that it was not necessary to state the history of the transaction.

Ex parte Allam in re Munday. 14 Q.B.D., 43.

But when a Bill of Sale stated the consideration to be the sum of £65 now paid, "and it was proved that the money had all been paid by instalments some months before" (the Bill was executed in January, 1879, and the instalments had been paid between April, 1877, and October, 1878). Bacon, C. J., held that the consideration was not truly stated, as all the money had been previously advanced.

Ex parte Berwick in re Young. 43 L.T., 576; 29 W.R., 292.

xpenses

If the expenses are retained out of the money stated to be the consideration, the consideration is not truly stated, and the Bill of Sale void.

Ex parte Firth in re Cowburn. 19 Ch.D., 419; 51 L.J., Ch. 473; 46 L.T., 120; 30 W.R., 529.

(*Ex parte National Mercantile Bank in re Haynes.* 15 Ch. D., 42; 49 L.J., Bank, 62; 43, L.T., 36; 28 W.R., 848.

And ex parte Challinor in re Rogers. 16 Ch.D., 260; 44 L.T., 122; 29 W.R., 205. Discussed.)

Where the same solicitor acts for both parties.

In *in re Cann* it was held that when a solicitor was acting for both parties the consideration was truly stated, although £9 of the money, purporting to be paid under the Bill of Sale, was retained by such solicitor for costs. Cave, J., in his judgment, said: "When frauds are committed this court will be perfectly able to distinguish between the honest and genuine transaction, which I am convinced this is, and transactions which may be found to be frauds when brought to light. This court will not have the slightest difficulty in dealing with such cases, and dealing with fraudulent persons as they deserve."

Bona fides the essence of question of consideration.

In re Cann. 13 Q.B.D., 36.

Form of Bill of Sale.

9. A Bill of Sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

There must be no substantial variation in the form of a mortgage Bill of Sale from the form in the schedule of the Act of 1882, which is—

This indenture, made the day of , between A. B. of , of the one part, and C. D. of of the other part, witnesseth that in consideration of the sum of £ now paid to A. B. by C. D., the receipt of which the said A. B. hereby acknowledges (or whatever else the consideration may be), he the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed, by way of security for the payment of the sum of £ and interest thereon at the rate of per cent per annum (or whatever else

may be the rate). And the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal payments of £ , on the day of (or whatever else may be the stipulated times or time of payment). And the said A. B. doth also agree with the said C. D. that he will (here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeasance of the security).

Provided always that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said A. B., in the presence of me, E. F. (add witness's name, address, and description).

Essentials to the validity of a mortgage Bill of Sale.

What is necessary and what is permitted in a mortgage Bill of Sale :—

(1) The date of the execution of the Bill of Sale must be truly stated.

(2) The names, residences, and descriptions of the parties must be truly and fully stated. (See p. 23.)

(3) The consideration must be truly stated (and by section 12, Act 1882, must be at least £30).

(4) Assignment to the grantee, his executors, administrators, and assigns.

(5) The assignments must be made unequivocally by the owner. Such words as "beneficial owner."

In re Barber ex parte Trustees. 2 *Times* L.R., 557 ; 17 Q.B.D., 259 ; 55 L.J., Q.B., 341.

Or a covenant of title by the grantor for "self and every other person claiming any interest."

Liverpool Investment Society v. *Richardson. Hall, Claim.* 2 *Times* L.R., 602. But see *ex parte Rawlings* re *Cleaver,* p. 38.

Invalidated a Bill of Sale.

(6) The things assigned must be assigned as "all and singular the several chattels and things specifically described in the schedule hereto annexed." (See note to sections 4 and 5, Act 1882.)

(7) The sum secured must be stated.

(8) And the *rate* per annum, or otherwise, of interest must be clearly stated. A sum fixed as capitalised interest will not do. The *rate* must appear. (See note on cases.) Interest upon interest will invalidate a Bill of Sale.

Goldstrom v. *Tallermann.* 17 Q.B.D., 80.

Myers v. *Elliot.* 16 Q.B.D.; 55 L.J., Q.B., 233.

(9) There must be a stipulated time or times for payment of the principal sum and interest then due. The Bill may either provide for the sum being paid entirely on any one fixed day or by equal instalments on certain fixed days, but it will be bad if it makes the payment due on demand.

Melville v. *Stringer.* 13 Q.B.D., 392 ; 53 L.J., Q.B., 482.

Hetherington v. *Groome.* 13 Q.B.D., 789 ; 53 L.J., Q.B, 576.

Sibley v. *Higgs.* 15 Q.B.D., 619.

(10) *Covenants.*—For payment of rents, rates, taxes, and insurance. The bill must give power to seize for any and each of the causes mentioned in section 7, Act 1882, *e.g.*, in the event of the grantor failing to pay at the stipulated time, or failing without reasonable excuse to produce the receipts for such rent, rates, and taxes, and for premiums for insurance upon demand in writing by the grantee.* The demand must be made in writing, and if the expression "forthwith" (except as to insurance) is used instead of on demand in writing, the bill will be voided. *In re Williams ex parte Pearce.* 25 Ch.D., 656.

Hammond v. *Hocking.* 12 Q.B.D., 291; 53 L.J., Q.B., 205.

A covenant may be inserted to allow the grantor to retain out of the proceeds of the sale of the chattels after seizure for any of the causes allowed by sect. 7, Act 1882, the costs of discharging incumbrances, and of the removal, warehousing, retaining, valuing, and selling the goods.†

Consolidated Credit and Mortgage Corp. v. *Gosney.* 16 Q.B.D., 24; 55 L.J., Q.B. 61.

There may be a covenant for further assurance, but it must be in the ordinary form.

Ex parte Rawlings in re Cleaver. 2 *Times* L.R., 795.

(See p. 38.)

But such a covenant must not make it impossible to answer the question "What is the extent of the rights and obligations of the parties from the words of the Bill of Sale itself?"

Liverpool Commercial Investment Society v. *Richardson.* (Hall, claimant.)

There may be a covenant on the part of the grantor to replace chattels when necessary.

Consolidated Credit Co. v. *Gosney.* 16 Q.B.D. 24; 55 L.J., Q.B., 61. (But see note on p. 19.)

A provision that a purchaser on a sale after default in payment of an instalment due under a Bill of Sale, shall not be bound to inquire whether such a default has been made renders a Bill of Sale void.

Blaiberg v. *Parsons.* 17 Q.B.D. 336.

11. The following clause must in all cases be in mortgage Bills of Sale:—

"Provided always that the chattels hereby assigned shall

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* Held in *Watkins* v. *Evans* that power to seize must be given, as it could not be implied; but the case was carried to the Court of Appeal, which reserves judgment. *The Times*, August 11th, 1886.

† But where a Bill of Sale provided that sums of money paid by the mortgagees for rent and other outgoings might be added to the other moneys, and default of payment of them by the mortgagor be made to justify seizure or sale of the chattels assigned, it was held that inasmuch as there was considerable ambiguity as to the particular time at which sums of money paid by the mortgagees for rent, &c., were to be repaid, the Bill of Sale was void, as not being in accordance with the statutory form. Held further that the power to seize could not be justified on the ground that it was "necessary to maintaining the security." *Bianchi* v. *Offord.* 2 *Times* L.R., 875.

not be liable to be seized or to be taken possession of for any cause other than those specified in Sect 7 of the Bills of Sale Act (1878) Amendment Act, 1882."

It must be remembered that this clause will not have the effect of remedying a Bill of Sale which is bad for containing a covenant giving a right to seize contrary to Sect. 7 of the Act.

In re Williams ex parte Pearce. 25 Ch.D., 656.

A Bill will be bad for giving power of sale immediately after seizure. The Bill of Sale must express the proviso that the sale must not take place until five clear days have elapsed after seizure (in pursuance of sect. 13 of the Act 1882).

Melville v. *Stringer.*

12. The deed must be signed, sealed, and delivered in the usual way.

13. The deed must be attested, and the name, address, and description of the witness must be accurately given, so that any person may recognise the witness from such description.

(See note to sect. 8 Act 1878, and sects. 8-10 Act 1882. "Residence and description of grantor and witness.")

14. Having now been drawn so as to comply with the provisions of the Act, and having been duly attested, the Bill of Sale must still be registered.

(See notes on registration and reregistration, ante, p. 22.)

15. The Bill of Sale must be duly stamped.

Notes on the cases arising under sect. 9.

When a Bill of Sale is void as not being made in accordance with the form in the schedule of the Act of 1882, the covenant in it for payment of principal and interest is also void.

Davies v. *Rees.* 17 Q.B.D., 408; W.N., May 22nd, 1886, p. 94; 2 *Times* L.R., 633.

In re Barber.

This case (*in re Barber ex parte the Trustees*, and first of all reported as *ex parte Stanford*) raised the important question whether a Bill of Sale, with the words "as beneficial owner," incorporates by reference the covenants which, by the Conveyancing Act 1881, are to be introduced by reason of these words, and whether the Bill of Sale is thus rendered void under the Act of 1882, which requires mortgage Bills of Sale of personal chattels to be made in the form given in the schedule, which form does not contain such covenants. It was decided by the whole Court of Appeal that the words did so introduce the covenants, and that the Bill of Sale was accordingly void under sect. 9, Act 1882. The covenants implied contained, *inter alia*, a power of immediate taking position and of selling the chattels in default of the payment of interest. This would give the Bill of Sale a legal effect beyond that involved in the use of the simple form. . . . It would do away with the benefit of the five days' grace between seizure and sale.

Prolixity.

Fry, L.J., concurred in the result, but he did not entirely agree in the principle laid down by Bowen (L.J.) that to be void under the Act the Bill of Sale must have a different effect from what it would have had if the statutory form had been followed in case of divergence from such form. He did not

think that a more prolix instrument would be in accordance with the form. *In re Barber ex parte Stanford.* 55 L.J., Q.B., 341; 17 Q.B.D., 259.

Bill of Sale must be such "that he who runs may read."

In *Goldstrom* v. *Tallerman*, 17 Q.B.D., Matthew, J., epitomises the law as to the form of a Bill: "A Bill of Sale must be so plain that 'he who runs may read.'"

Sibley *v.* Higgs

There appears to be some doubt whether Bills given by way of indemnity come within the Act of 1882. In Sibley *v.* Higgs a Bill of Sale was given by way of indemnity to the grantee on his becoming security for the payment by the grantor of a sum of money due by him to his creditors. The grantor agreed that he would pay the said sum of money to his creditors on a given day, and the Bill of Sale provided that if he did not pay the money on the day named, and the grantee should be obliged to pay the same, the grantor would repay to the grantee the amount within seven days after demand in writing, with power, in default, to the grantee to seize and sell the goods. Held (by Manisty and Field, J.J.), on the authority of *Hetherington* v. *Groome* (13 Q.B.D., 789), that the Bill of Sale did not contain an agreement to pay the money secured at a stipulated time in accordance with the form given in the schedule of the Act of 1882, and was therefore void.

Bills by way of indemnity.

Sibley v. *Higgs.* (Taplin, claimant.) 15 Q.B.D., 619.

But in a more recent case, Manisty and Matthew (J.J.) decided that in cases where a Bill of Sale is given by way of indemnity, and the statutory form cannot therefore be followed, it is not necessary to follow the form,

Hughes v. *Little.* 17 Q.B.D. 204; 2 *Times* L.R., 638.

This latter case is on its way to the Court of Appeal.

Covenants must be written in the Bill of Sale itself, and not referred to only.

A Bill of Sale, after reciting a certain indenture, contained *inter alia* an agreement by the grantor that he would perform the covenants and stipulations contained in the said recited indenture, but these covenants and stipulations did not appear in the Bill of Sale. Held that the Bill of Sale was void under section 9. *Lee* v. *Barnes*, 17 Q.B.D. 77.

Stipulated time for payment.

When a Bill of Sale was given to secure several sums of money due to and advanced by five separate parties, and amongst other covenants contained separate covenants with four of the parties to pay on demand the sums due to each, with a declaration that if default should be made in any sum or sums of money thereby secured, or if any other default or event mentioned in section 7, Act 1882, as a cause of seizure should happen, it should be lawful for the mortgagees to enter, seize, and sell the property. Held that the Bill of Sale was a substantial alteration of the form in the schedule of the Act, and therefore in contravention of section 9, and void, even supposing it to contain no stipulations inconsistent with the other provisions of the Act. Fry (L.J.) suggested that where there are several mortgagees the Bill of Sale might be made to a trustee, with all the facts recited.

Melville *v.* Stringer.

When several mortgagees Fry (L.J.) suggests a Bill of Sale to a trustee with all facts recited.

Melville v. *Stringer (Court of Appeal reversing* Q.B.D.) 13 Q.B.D. 392; 53 L.J., Q.B. 482.

Where a Bill of Sale which was made after the passing of the Bills of Sale Act, 1882, contained an agreement by the mortgagor that he would upon demand in writing pay to the mortgagee the principal sum and interest, and that it should be lawful for the mortgagee to enter upon the premises where the assigned effects might be, to seize and sell the same if the mortgagor should make default in payment on such demand being made, or if any of the contingencies mentioned in sect. 7, sub-sects. 2, 3, 4, and 5, of the Act, 1882, should happen, and provided that the effects assigned should not be liable to seizure for any cause other than those specified in sect. 7, Act, 1882, *held* that the Bill of Sale was void because it gave a power to seize in default of payment on demand, and not as required by sect. 7, and the schedule of the Act, at a time therein provided or stipulated for payment. *Held* further by Brett (M.R.) and Fry (L.J.) that the Bill of Sale was void under sects. 9 and 13 of the Act, because the power of sale therein contained arose forthwith in the happening of any of the contingencies mentioned, and was not limited to the expiration of 5 clear days from the day of seizure, as required by sect. 13, Act, 1882.

Hetherington v. Groome.

Hetherington v. *Groome.* 13 Q.B.D., 789; 53 L.J., Q.B. 576.

By a Bill of Sale the grantor assigned to the grantee the goods enumerated in the schedule thereto, by way of security for the payment of £300, money advanced, and £180 for agreed capitalised interest thereon, at the rate of £60 per cent per annum, making together the sum of £480, by instalments, of a certain amount at certain specified times. The grantor also covenanted *(inter alia)* that she would deliver to the grantee the receipts for rent, rates and taxes in respect of the premises on which the goods assigned might be, when demanded, "in writing or otherwise," and also that she would not make any assignment for the benefit of creditors, or file a petition for liquidation or composition with creditors, or do or suffer anything whereby she should render herself liable to become or to be made a bankrupt. It was also by the said Bill of Sale agreed that if the grantor should break any of the covenants all the moneys thereby secured should immediately become due and should forthwith be paid to the grantee, and it was provided that the chattels assigned should not be liable to seizure for any other cause than those specified by sect. 7, Act 1882. *Held* that the Bill of Sale was void, as not made in the form given in the schedule. *Held* also, that the Bill of Sale could not be supported, inasmuch as it enabled the grantee to seize the goods upon a failure by the grantor to produce the receipts for rent, rates, and taxes after a verbal demand.

Davis v. Burton.

Davis v. *Burton.* 10 Q.B.D., 414. Affirmed in 11 Q.B.D., 537; 52 L.J.; Q.B., 334, 636.

The grantor of a Bill of Sale, in consideration of £30 paid him by the grantee, and of £10 charged by the grantee as bonus or

Ex parte Pearce *re* Williams.

commission, assigned certain goods to the grantee to secure the repayment of a loan of £40, with interest at 5 per cent, and agreed to pay "forthwith" to the grantee the principal, interest and costs then due, and also, all rents, taxes, &c., and "forthwith" to produce receipts therefor. It was also agreed that if the grantor should make default in payment of the sums at the time and in the manner appointed, or do or suffer anything whereby he should render himself liable to become a bankrupt, or remove or suffer the chattels to be removed, or if execution should be or should have been levied against his goods, or if default should be made in the performance of any of the covenants, then it should be lawful for the grantee to seize. There was also a proviso at the end of the Bill of Sale that the chattels should not be liable to be taken possession of by the grantee "for any cause other than those specified in section 7, Act 1882." *Held*, following *Davis* v. *Burton*, that the Bill of Sale was void, not being in accordance with the form in the schedule of the Act; and that the proviso at the end of the Bill of Sale did not cure the invalidity of the preceding clauses.

Ex-parte Pearce in re Williams. 25 Ch.D. 656, 49 L.T. 475; 32 W.R. 187.

Myers *v.* Elliot.

A Bill of Sale which assigns chattels to secure the payment of the principal sum, together with a sum for agreed interest and bonus, is void under the Bills of Sale Act, 1882, because it is impossible to say how much of the latter sum is attributable to interest and how much to bonus, and therefore the rate of interest cannot be ascertained.

A Bill of Sale, the effect of which is to provide that on the non-payment of any instalment (if a lump sum agreed for interest and bonus) the whole of the chattels thereby assigned may be seized and sold by the grantee is void (*Davis* v. *Burton*), as not being substantially in accordance with the form in the schedule.

Semble. That a Bill of Sale is void which does not state the *rate* of interest payable by the grantor, but provides for the payment of a lump sum as interest (*Thorpe* v. *Cregeen*, 55 L.J., Q.B. 80, in which it was held that the fact of the amount of interest being stated in a lump sum did not render the instrument void; disapproved.)

Myers v. *Elliott.* 16 Q.B.D. 526, 55; L.J., Q.B. 233.

In *re* Townsend *ex parte* Parsons

A letter whereby the owner of goods authorises another person to take immediate possession of them and afterwards to sell them, and out of the proceeds to deduct money due to him from the owner to pay certain accounts and to pay over the balance to the owner, is a licence to take possession of personal chattels as security for a debt within the 4th section of the Act 1878, and is a Bill of Sale by way of security for money within the Act of 1882, and not being in the form of the schedule is void, and possession taken of the goods before the commencement of the bankruptcy of the owner is of no effect as against the bankrupt or his trustee. *In re Hall, ex parte Close* (54 L.J.,

Q.B. 43; 14 Q.B.D., 386) and *in re Cunningham* (54 L.J., Ch. 448; 28 Ch.D. 682), so far as they lay down that a transaction which cannot by possibility be brought within the form of the schedule is a transaction to which the Act of 1882 does not apply. Disapproved.

In re Townsend, ex parte Parsons. 16 Q.B.D., 532; 55 L.J., Q.B. 137.

Goldstrom *v.* Tallermann.

By a Bill of Sale goods were assigned as security for repayment of £500, and interest thereon at £60 per cent, and the grantor agreed to pay "the principal sum aforesaid, with the interest then due, by twelve equal monthly instalments of £41 13s. 4d., until the whole of the said sum and interest should be fully paid," and that in default of payment of any instalment, then that the grantor would pay interest thereon at the rate aforesaid from the date when such instalment should become due until full payment thereof. The grantor also agreed *(inter alia)* to insure the premises assigned and to pay all premiums, and that upon default the grantee might do so, and "charge the costs thereof, with interest at the rate of £20 per cent per annum to the grantor, and the same should be considered to be included in the security;" and might pay all rent, rates, and taxes at any time due for the messuage in which the goods might be; and thereupon all such payments made by the grantee, together with interest at £20 per cent per annum, should be a charge upon the chattels, which should not be redeemed until full payment of all such sums and interest. *Held* that on the construction of the Bill of Sale interest upon interest was reserved, and that it was at least uncertain whether redemption was not prevented until the expiration of the period over which the repayment by instalments would extend, and that the stipulations being doubtful and of an oppressive kind, were inconsistent with the form prescribed by the Bills of Sale Act, 1882, and rendered the Bill of Sale void.

Goldstrom v. *Tallermann (Harris claimant).* 17 Q.B.D., 80.*

Parsons *v.* Hargrave (Blaiberg claimant).

A Bill of Sale gave a power of sale and also contained a stipulation that the purchaser of the goods assigned should not be bound to see that there had been a default, the effect of which would be that the assignee might sell before a default, and yet the purchaser would have a right to the goods. It also contained a covenant for further assurance (one of the covenants held in *in re Barber, supra*, to invalidate a Bill of Sale). It was for £44, at 60 per cent per annum. *Held* that the Bill was void, as containing an additional term, for the benefit of the assignee, which was not to be found in the statutory form.

Parsons v. Hargrave (Blaiberg claimant). 17 Q.B.D., 336; 55 L.J., Q.B., 408; 2 *Times* L.R., 706.†

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* Taken to the Court of Appeal which reserved judgment.

† Reported in L.R. as *Blaiberg* v. *Parsons.*

Liverpool Commercial Investment Society *v.* Richardson (Hall claimant)

The grantor of a Bill of Sale gave a covenant of title for herself and for "every other person claiming any interest" in the chattels assigned, and further agreed that the grantee should, on sale, retain the principal sum with "all costs and expenses incurred in relation to the security." *Held* that the Bill was void. Smith, (J.) said : "The real question was whether any person, on reading the Bill of Sale, could see the real position of the borrower and the actual amount of the money secured. "The case of *Consolidated Credit Corporation v. Gosney* (16 Q.B.D., 24) had only decided that the expression "defeasance" was large enough to include the costs of seizure. He was not prepared to say that if in the present case there had only been the ordinary covenants of title and for insurance these would not have come within the terms "maintenance and defeasance" in the form of the schedule to the Act of 1882. But the grantor here had covenanted not only a good title in herself but also in those holding under her and that any person who might claim any title to the goods comprised in the Bill of Sale "would execute and do all such assurances and things (at the cost until seizure and sale of the said mortgagor and afterwards of the person requiring the same) for the further and better assuring of all or any of the chattels or things of the said mortgagee, and enabling him or them to obtain possession of and quietly enjoy the same as by him or them shall be reasonably required. It might be that another Bill of Sale was outstanding; and assuming that the mortgagee sued the grantor of this bill, and recovered damages against her, and that she was without funds, then the amount of such costs and damages would be covered by the security of this Bill of Sale, and it would be quite impossible to say what they might amount to."

Liverpool Commercial Investment Society v. *Richardson.* 2 *Times* L.R., 602.

Ex parte Rawlings *re* Cleaver. Covenant for further assurance.

Ex parte Rawlings v. *Cleaver.*—The last case was distinguished. The Bill of Sale contained a covenant in the following terms—"and that the said mortgagor and every other person or persons claiming by or through the said mortgagor any interest in the said chattels and things or any of them will at all times at the cost of the said mortgagor execute and do all such assurances and things for the further and better assuring all or any of the said chattels and things unto the mortgagees and enabling them to obtain possession of the same as may by them be lawfully required."

Cave (J.), in his judgment, said, "He did not understand from the decision in *in re Barber* that a covenant for further assurance was necessarily inconsistent with the clauses of the Act. It seemed to him to be an authority that such a covenant might be inserted without invalidating the Bill of Sale. In the case of the *Liverpool Commercial Investment Society* v. *Richardson* the covenant went beyond the ordinary form, and the meaning of the decision in that case was that the ordinary covenant for further assurance was not bad. The Bill of Sale was good."

Ex parte Rawlings in re Cleaver. 2 *Times* L.R., 795.

In drawing or perusing a Bill of Sale two *dicta* upon sect. 9 must be remembered.

Dicta which must be remembered

Matthew (J.) "A BILL OF SALE MUST BE SO PLAIN THAT HE WHO RUNS MAY READ."

Goldstrom v. *Tallerman, supra.*

A. L. Smith (J.) "PERSONS COULD NOT TOO SOON REALISE THE FACT THAT THE ONLY SAFE COURSE WAS TO FOLLOW THE FORM IN THE SCHEDULE OF THE ACT OF 1882."

Liverpool Commercial Investment Society v. *Richardson, supra.*

Form of Register

12. The Registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any Bill of Sale or copy under this Act, enter therein, in the form set forth in the second schedule (B) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule, or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the Bill of Sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of Registered Bills of Sale, with reference to entries in the register of the Bills of Sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no other) shall be comprised in one division; but the arrange-

11. Where the affidavit (which under section 10 of the principal Act is required to accompany a Bill of Sale when presented for registration) describes the residence of the person making or giving the same, or of the person against whom the process is issued to be in some place outside the London Bankruptcy District, as defined by the Bankruptcy Act, 1869; or where the Bill of Sale describes the chattels enumerated therein as being in some place outside the said London Bankruptcy District, the Registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such Bill of Sale to the County Court Registrar in whose district such places are situate, and if such places are in the districts of different Registrars to each such Registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the Registrar of the County Court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of Bills of Sale registered by the Registrar under the principal Act.

ment within each such division need not be strictly alphabetical.

The Registrar.

13. The Masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may, for the time being, be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts 1873 and 1875, shall be the Registrar for the purposes of this Act, and any one of the said Masters may perform all or any of the duties of the Registrar.

36 and 37 Vict., c. 66, 38 and 39 Vict., c. 77.

By Rule 25 of Order LXI., Rules of the Supreme Court, 1883, "The Masters shall execute the office of the Registrar for the purposes of the Bills of Sale Act, 1878, and the Bills of Sale Amendment Act, 1882, and any one of the Masters may perform all or any of the duties of the Registrar."

RULES OF THE SUPREME COURT, DECEMBER, 1882 [NOT REPEALED BY THE NEW RULES, 1883.]

Rule 1. These rules may be cited as "The Rules of the Supreme Court, December, 1882," or each separate rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

Rule 2. These rules shall come into operation on the 1st January, 1883.

Rule 3. Abstract. The abstract of the contents of a Bill of Sale required by the Bills of Sale Act (1878) Amendment Act, 1882, to be sent to the Registrar of a County Court, shall be in the form given in schedule hereto.

Rule 4. Abstract to be sealed and dated. The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and dated on the day on which it is sent by post to the Registrar of the County Court named therein.

Rule 5. Abstracts to be numbered and filed. The Registrar shall number the abstracts in the order in which they shall be received by him, and shall file and keep them in his office.

Rule 6. Index, how to be kept. The Registrar shall keep an index, alphabetically arranged, in which he shall enter under the first letters of the surname of the mortgagor or assignor, such surname, with his Christian name or names, address, and description, and the number which he affixed to the abstract.

Rule 7. Search and inspection of abstract. The Registrar shall allow any person to search the index at any time during which he is required by the County Court rules, for the time being, to keep his office open, upon payment by such person of one shilling; and to make extracts from the abstract on payment of one shilling for each abstract inspected.

Rule 8. Office copy of abstract. The registrar shall also, if required, cause an office copy to be made of any abstract, and shall be entitled for making, marking, and sealing the same, to the same fee as is payable in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, viz., sixpence per folio.

SCHEDULE.

Abstract must contain in parallel columns statements as to—(1) Mortgagor or assignor. (2) Residence and occupation. (3) Mortgagee or assignee. (4) Nature of instrument and consideration. (5) Nature of property assigned. (6) Amount secured and how repayable. (7) Rate of interest. (8) Date of instrument. (9) Date of registration. It should be addressed to the Registrar of the County Court of , holden at , and sealed, and the date of despatch should be given.

Bills of Sale under £30 to be void.

12. Every Bill of Sale made or given in consideration of any sum under thirty pounds shall be void.

That is, every Bill of Sale given upon personal chattels to become the payment of money. The section does not apply to absolute Bills of Sale, or to debentures.

Chattels not to be removed or sold.

13. All personal chattels seized, or of which possession is taken after the commencement of this Act, under or by virtue of any Bill of Sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

As regards Bills of Sale registered before the Act of 1882 came into operation, this Section is a legislative prohibition as regards the removal or sale of chattels seized under a Bill of Sale until five clear days have elapsed since such seizure. As regards Bills of Sale executed after the commencement of the Act, it is equally a prohibition, and moreover removes any clause or covenant which is inconsistent with this section and renders the Bill of Sale void.

Hetherington v. *Groome* and in *re Barber.*

It is a safe course to add to each clause or covenant giving power of seizure and sale a proviso that such sale shall not take place until five clear days have elapsed after seizure. The object of this section is explained in sect. 7, clause 2, which provides the grantor of the chattels with means of preventing the sale, if there was no cause for the seizure, or if such cause had no longer any existence owing to the payment of money or otherwise. When no cause for seizure ever existed the court restrained the sale of the chattels.

Ex parte Cotton. 11 Q.B.D., 301 ; 49 L.T., 52.

What are the five clear days.

The five clear days are exclusive of the day of seizure and of that on which removal or sale takes place.

Goods seized in public street.

When a cab which was the subject of a Bill of Sale was seized in the public street upon failure to pay instalments, and was removed to the premises of the grantee, and after five days sold, it was held that the Act of 1882 had not been infringed; and as no damage had been proved no action would lie.

O'Neill v. *City and County Finance Company.* 17, Q.B.D., 234.

Bill of Sale not to protect chattels against poor and parochial rates

14. A Bill of Sale to which this Act applies shall be no protection in respect of personal chattels included in such Bill of Sale, which but for such Bill of Sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

The distress for taxes, &c., may be made during the five days of grace allowed to the grantor, or before seizure by the grantee. The section only applies to Mortgage Bills of Sale.

Repeal of part of Bills of Sale Act, 1878.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

The repeal only extends to mortgage Bills of Sale. The Act of 1882 does not in any way effect Bills of Sale made otherwise than for securing the payment of money.

See sect. 3, Act 1882.

See also *Gibbons* v. *Hickson.* 55 L.J., Q.B., 119.
Swift v. *Pannell.* 24 Ch. D., 210; 53 L.J. Ch., 335
Casson v. *Churchley.* 53 L.J., Q.B., 335.
Robinson v. *Tucker.* 1 C. & E., 173.

Rectification of register.

14. Any Judge of the High Court of Justice, on being satisfied that the omission to register a Bill of Sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register or the true name, residence, of occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

A Bill of Sale void for want of renewal of registration at the commencement of the Bills of Sale Act, 1878, cannot be renewed under section 14 of that Act.

Renewal of registration, rectification of register.

Askew v. *Lewis* or *Lewis* v. *Driscoll.* 10 Q.B.D., 477; 48 L.T., 534; 31 W.R., 417.

Entry of satisfaction

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the Registrar may order a memorandum of satisfaction to be written upon any registered copy of a Bill of Sale, upon the prescribed evidence being given that the debt (if any) for which such Bill of Sale was made or given has been satisfied or discharged.

The Rules of the Supreme Court, 1883, order 61, Rules 26 and 27, are:—

"A memorandum of satisfaction may be ordered to be written upon a registered copy of a Bill of Sale, on a consent to the satisfaction, signed by the person entitled to the benefit of the Bill of Sale, and verified by affidavit being produced to the Registrar and filed in the central office."

"When the consent in the last preceding rule mentioned cannot be obtained the Registrar may, on application by summons and on hearing the person entitled to the benefit of the Bill of Sale, or an affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the Registrar that the debt (if any) for which the Bill of Sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof."

Copies may be taken, &c.

16. Any person shall be entitled to have an office copy or extract of any registered Bill of Sale and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice; and any copy of a registered Bill of Sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. [Any person shall be entitled at all reasonable times to search the register, and every registered Bill of Sale, upon payment of one shilling for every copy of a Bill of Sale inspected.] Such pay-

Inspection of registered Bills of Sale.

16. So much of the 16th section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered Bill of Sale upon payment of one shilling for every copy of a Bill of Sale inspected, is hereby repealed; and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered Bill of Sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each Bill of Sale

ment shall be made by judicature stamp.

inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Rule 23. Order 51. Rules of the Supreme Court, 1883, provides that "The Registrar of Bills of Sale shall, on a request in writing, giving sufficient particulars, and a payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search."

As to the prescribed fee, see note to sect. 18, Act 1878.

Office copy evidence of a Bill of Sale and of its registration.

Any copy of a registered Bill of Sale and affidavit purporting to be an office copy thereof, is admitted as *prima facie* evidence of such Bill, and of the fact and date of registration as shown thereon. It is necessary that the document should have the official seal of the central office.

Affidavits.

17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Perjury at common law.

Making a false oath sworn in an affidavit for the purpose of obtaining the registration of a Bill of Sale is a misdemeanour at common law. *Reg.* v. *Hodgkiss*, 11 Cox, C.C., 365.

Fees.

18. There shall be paid and received in common law stamps the following fees, viz.:—

On filing a Bill of Sale 2/-
On filing the affidavit of execution of a Bill of Sale 2/-
On the affidavit used for the purpose of reregistering a Bill of Sale (to include the fee for filing) 5/-

Further fees were prescribed by an Order of the Supreme Court, dated August, 1880.

Searches and inspections when made by an officer of the registry :—

	s.	d
For an official certificate of the result of a search in one name in any register or index under the custody of the registrar of Bills of Sale	5	0

For every additional name if included in the same certificate	2	0
For a duplicate copy if not more than three folios	1	0
For every additional folio	0	6
For a continuation search if made within fourteen days of date of official certificate (the result to be endorsed upon such certificate)	1	0

Collection of fees, under 38 and 39 Vict., c. 77, s. 26.

19. Section 26 of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

The section of the Judicature Act referred to relates to fixing the amount of fees, the manner of collecting them, and their payment into the Exchequer. Fees are to be paid by stamps.

Order and disposition, 22 and 33 Vict., c. 71.

20. Chattels comprised in a Bill of Sale which has been and continues to be duly registered under this Act, shall not be deemed to be in the possession, order, or disposition of the grantor of the Bill of Sale, within the meaning of the Bankruptcy Act, 1869.

Repealed by Section XV., Act, 1882.

This section is repealed only so far as it related to mortgage Bills of Sale. When a Bill of Sale was given by way of absolute transfer the chattels comprised in it were held not to be within the possession order or deposition of the grantor within the meaning of the Bankruptcy Act, 1869, because sect. 20 of the Act of 1878 had not been repealed as regards absolute Bills of Sale. *Swift* v. *Pannell.* 24 Ch.D. 748; 73 L.J., Ch. 335.

The Bankruptcy Act of 1883 limits the right of a trustee in Bankruptcy to chattels connected with the trade or business of the debtor, so that household furniture, though in the order and disposition of the Bankrupt with the consent of the true owner, as a rule will remain subject to any Bill of Sale which has been executed concerning it.

The statute runs: "All goods which are at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof are (with certain exceptions) deemed his property available for distribution amongst his creditors." (46 and 47 Vict., c. 52, sect. 44, sub-sect. 3.)

As regards mortgage Bills of Sale, therefore there is no longer any protection for the Bill of Sale holder as to chattels in the order, possession of the bankrupt in his trade or business with the consent of the true owner, but as regards absolute Bills of

Sale and also other bills registered under the Act of 1878, the protection afforded by sect. 20, Act 1878, still exists.

The reputation of ownership may be rebutted by evidence of notorious custom in the various trades. There are numerous cases on the subject. A mere demand on the part of the true owner is sufficient to take chattels out of the reputed ownership of the bankrupt. *Ex parte Ward in re Couston.* 8 Ch. App. 144; 42 L.J., Bk. 17; 27 L.T. 302.

Rules. 36 and 37 Vict., c. 66. 39 and 30 Vict., c. 77.

21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner, in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Time for Registration.

22. When the time for registering a Bill of Sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

By section 8, Act 1882, if a Bill of Sale is executed out of England the time for registration begins to run from the time at which in the ordinary course of post it would arrive in England if posted immediately after the execution thereof.

Repeal of Acts 17 and 18 Vict. c. 36. 29 and 30 Vict., c. 96.

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act 1866, shall be repealed. Provided that (except as is herein expressly mentioned with respect to construction, and with respect to renewal of registration) nothing in this Act shall affect any Bill of Sale executed before the commencement of this Act, and as regards Bills of Sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a Bill of Sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

Debentures to which Act not to apply.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Debentures.

There has been no decision as to the position of debentures under the combined Bills of Sale Acts. As, however, debentures are excluded from the operation of the Amendment Act in exactly similar words to those used in excluding all but mortgage Bills of Sale, and as the repeal of certain sections by the Amendment Act has been held not to apply to absolute Bills of Sale by virtue of such exclusion, it would appear that debentures are still governed by the Act of 1878, and must be attested by a solicitor, and comply with the other provisions of that Act in the same way as absolute Bills of Sale. On the other hand, it may be contended the words in section 17 of the Act of 1882, "this Act," mean the combined statutes; and in support of this view it may be argued that as all companies are bound to keep a register of their incumbrances, which is open to public inspection, the registration of debentures is unnecessary, and that, therefore, the Legislature intended to exclude them from the operation of both Acts. As far as can be gathered from the report Kay J. appears in a recent case incidentally to favour the latter view, but the question was not raised.

Ross v. *Army and Navy Hotel Company.* ii. The *Times* Law Reports, 834.

Covering deeds.

Where debentures are secured by what is known as a "covering deed," there seems some conflict of opinion as to whether the deed is or is not excluded from the operation of the Act of 1882. Field (J.), in *Brocklehurst* v. *The Railway Printing and Publishing Co.*, Bittleston's Reports, Q.B.D., 71, held such a deed to be a void Bill of Sale for not complying as to form with the Act of 1882, though registered, while Kay (J.), in *Ross* v. *Army and Navy Hotel Co.*, *supra*, doubts the above decision, but decides the case before him on a different point.

Equity of debenture holders.

When a covering deed is void for want of registration (if it ever be so), or for any other reason by the mistake or neglect of the officers of the company, the intention to give the debenture holders a valid charge on the property of the company comprised in the covering deed is manifest in the debentures. The debentures are, on the face of them, equivalent to a contract in equity, to charge the money lent upon the chattels comprised in the deed. The company, after a winding-up order, as was held in the case of the Strand Music Hall, is bound by this equity.

Ross v. *Army and Navy Hotel Co.*
Burgh v. *Francis* (equity cases abridged, 320).
Taylor v. *Wheeler* (2 Vernon, 564).
Jennings v. *Moore* (2 Vernon, 609).
In re Strand Music Hall Co. (3 De Gek, Jones and Smith, 147), cited.

Debenture holders and official liquidators. Sect. Act 1878, does not apply to winding-up companies.

As regards the rights of the holders of unregistered debentures (issued before the Act of 1882 came into operation), as against the official liquidator of the Company issuing the debentures, it has been held that as section 8 of the Act of 1878 does not apply to the winding-up of a Company, the

debenture holders do not lose their priorities for want of registration, and that if a sale of the mortgaged chattels has been effected, the official liquidator must refund the proceeds to the debenture holders.

In re Asphaltic Wooden Pavement Co., 49 L.T., 159; 32 W.R., 16.

Extent of Act.

24. This Act shall not extend to Scotland or to Ireland.

18. This Act shall not extend to Scotland or Ireland.

Extent of Act.

FORM.

This indenture, made the day of , one thousand eight hundred and eighty , between (1) of (2) (3) of the one part, and (1) of (2) (3) of the other part, witnesseth that in consideration of (4) pounds [or whatever else the true consideration may be] now paid to by , the receipt of which he, the said hereby acknowledges, he, the said , doth hereby assign unto , his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of pounds and interest thereon at the rate (5) of per cent per annum [or whatever else may be the rate], and the said doth further agree and declare that he will duly pay to the said the principal sum aforesaid, together with the interest then due by equal (6) payments of £ on the day (7) of 18 , the day of , the day of , and the day of , 18 [or whatever the stipulated times may be] (8), and the said doth also agree with the said that he will at all times during the continuance of this security insure and keep the said chattels and things insured against loss or damage by fire in the sum of pounds at the least, and will apply the moneys to be received by virtue of any such insurance in payment to the said of the principal sum aforesaid, or so much thereof as may then remain unpaid, together with the interest then due. And also will punctually pay all rent, rates, and taxes to become due and payable in respect of the premises on which the said chattels and things, or any of them, shall be and will upon demand in writing by the said produce to him the last receipts for rent, rates, and taxes, and for the payment of the premium of the insurance aforesaid. And that if the said shall neglect to pay any rent, rates, or taxes, or outgoings hereby agreed to be paid, or to effect or to continue the assurance of the said chattels and things, or to produce to the said the last receipts for any rent, rates, taxes, or outgoings as aforesaid, or the said policy of insurance, or the last receipt for premium thereon without reasonable excuse upon demand in writing as aforesaid, then the said if he shall think fit and without prejudice to his right to exercise the powers hereinafter contained arising by such default, may pay such rent, rates, taxes, and outgoings as aforesaid, or effect and continue the said insurance, and shall be entitled to retain the amount so expended from the balance which may remain after the principal sum or so much thereof as remains unpaid and the

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(1) Full name.
(2) Full address, so that anyone may recognise clearly who the parties are.
(3) Full and correct description must be added.
(4) The consideration must be duly stated.
(5) The *rate* of interest must be stated. Interest stated as a lump sum vitiates a Bill of Sale. (*Myers* v. *Elliot.*) So does interest on interest. (*Goldstrom* v. *Tallerman.*)
(6) Insert "quarterly," "half-yearly," "monthly," or whatever the payment may be.
(7) There must be a stipulated time or times of payment. (*Hetherington* v. *Groome, &c.*)
(8) If only one time of payment is agreed to, the Bill will run—"the principal sum, together with the interest then due on the day of 18 ."

interest due thereon have been satisfied out of the proceeds of the lawful sale of such chattels in manner hereinafter prescribed upon one of the events or defaults hereinafter mentioned as lawful causes for seizure and sale occurring. And that the said and every other person or persons claiming by or through the said any interest in the said chattels and things or any of them will at all times, at the cost of the said execute and do all such assurances and things for the further and better assuring all or any of the said chattels and things unto the said and enabling him to obtain possession of the same as may by him be lawfully required. And it is hereby agreed and declared that in case the said shall make default in payment of the principal sum aforesaid, or any part thereof, at any of the said times [or time] hereinbefore provided for payment, or in the performance of any covenant or agreement herein contained and necessary for maintaining this security, or if he shall become a bankrupt or suffer the said chattels or things or any of them to be distrained for rent, rates, or taxes, or if the said shall fraudulently either remove or suffer the said goods or any of them to be removed from the premises on which the same are or shall be, or if he shall not without reasonable excuse upon demand in writing by the said produce to him the last receipts of the said for rent, rates, taxes, or for the payment of the premium on the insurance aforesaid, or if execution shall have been levied against the goods of the grantor under any judgment at law, it shall be lawful for the said his servants or agents, to enter into and upon the premises on which the said chattels and things, or any of them, are or shall be, and to seize and take possession of the whole or any part thereof, and after the expiration of five clear days from the day of so seizing and taking possession to remove, sell, and dispose of the same, or any of them, for such price or prices as can reasonably be obtained, and either by public auction or private contract, and out of the sale moneys to retain the principal sum aforesaid, or so much thereof as may for the time being remain unpaid and the interest then due, together with all costs and expenses incurred in the warehousing, seizing, removing, valuing, and selling of the said chattels, and the amount of money expended in the discharge of incumbrances as aforesaid, and shall pay the surplus (if any) to the said . And it is hereby declared and agreed that this assignment shall be void if the principal sum aforesaid, with the interest thereon, shall be paid to the said his executors, administrators, and assignees, at the times [or time] and in manner aforesaid. Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said , for any cause other than those specified in section 7 of the Bills of Sale Act 1878, Amendment Act, 1882. In witness whereof the parties have hereunto set their hands and seals this day and year first above written..

Signed and sealed by the said in the presence of me. (Name)

Witness's address and description must be added.

Received the day and year first before written of and of the said the sum of being the consideration money hereinbefore expressed to be paid by him to me. £

Witness

The schedule above referred to.

BILLS OF SALE ACT, 1878.

41 & 42 VICT. c. 31.

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[22nd July, 1878.]

Act, 1878.

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Bills of Sale Act, 1878.

Short title.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Commencement

Application of Act.

3. This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpretation of terms.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of

any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such Bill of Sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"Prescribed" means prescribed by rules made under the provisions of this Act.

Application of Act to trade machinery.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive powers, such as the water wheels and steam engines, and the steam boilers, donkey engines, and other fixed appurtenances of the said motive powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed

appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a*) In or incidental to the making any article or part of an article; or

(*b*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c*) In or incidental to the adapting for sale any article.

Certain instruments giving powers of distress to be subject to this Act.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be). Avoidance of unregistered bill of sale in certain cases.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act. Avoidance of certain duplicate bills of sale

10. A bill of sale shall be attested and registered under this Act in the following manner : Mode of registering bills of sale

(1) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor :

(2) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale together with an affidavit of the time of such bill of sale being made or given, and of its due execution and

attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed :

(3) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Renewal of registration

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security

Every such affidavit may be in the form set forth in the schedule (A) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Form of register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was

issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The registrar

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

36 & 37 Vict. c. 66.
38 & 39 Vict. c. 77.

Rectification of register.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

Entry of satisfaction.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Copies may be taken, &c.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rates as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons be admitted

as prima facie evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.

Affidavits.

17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavits for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Fees.

18. There shall be paid and received in common law stamps the following fees, viz.:

On filing a bill of sale	2s.
On filing the affidavit of execution of a bill of sale ...	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing) ...	5s.

Collection of fees under 38 & 39 Vict. c. 77, s. 26.

19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Order and disposition.

20. Chattels comprised in a Bill of Sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaniag of the Bankruptcy Act, 1869.

32 & 33 Vict. c. 71.

Rules.

21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77.

Time for registration.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Repeal of Acts.

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

17 & 18 Vict. c. 36. 29 & 30 Vict. c. 96.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

Extent of Act.

24. This Act shall not extend to Scotland or to Ireland.

SCHEDULES.

SCHEDULE A.

Schedule A.
Section 11

I [*A.B.*] of do swear that a bill of sale, bearing date the day of 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day of 18 [*insert date of registration*], is still a subsisting security.

Sworn, *&c.*

SCHEDULE B.

Schedule B.
Section 12.

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of Instrument.	Date.	Date of Registration.	Date of Registration of Affidavit of Renewal.
		Name.	Residence.	Occupation.					

BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.

45 & 46 VICT. c. 43.

Act 1882.

An Act to amend the Bills of Sale Act, 1878.

[18th August, 1882.]

WHEREAS it is expedient to amend the Bills of Sale Act, 1878: 41 & 42 Vict. c. 31.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commencement of Act.

2. This Act shall come into operation on the first day of November, one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

Construction of Act. 41 & 42 Vict. c. 31.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but, unless the context otherwise requires, shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

Bill of sale to have schedule of property attached thereto

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale not to affect after-acquired property.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as to certain things.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say),

(1) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2) Any fixtures separately assigned or charged, and any plant, or trade machinery, where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale with power to seize, except in certain events to be void.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes;—

(1) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time

therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;

(3) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

(4) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;

(5) If execution shall have been levied against the goods of the grantor under any judgment at law;

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Bill of sale to be void unless attested and registered.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

Form of bill of sale.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

Attestation.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Local registration of contents of bills of sale.

32 & 33 Vict. c. 71, s. 60.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bank-

ruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

Bill of sale under £30 to be void.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Chattels not to be removed or sold.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bills of sale not to protect chattels against poor and parochial rates.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Repeal of part of Bills of Sale Act, 1878.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Inspection of registered bills of sale.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, ad-

dresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company. Debentures to which Act not to apply.

18. This Act shall not extend to Scotland or Ireland. Extent of Act.

SCHEDULE.

Schedule.

Form of Bill of Sale.

THIS INDENTURE made the day of , between *A.B.* of of the one part, and *C.D.* of of the other part, witnesseth that in consideration of the sum of £ now paid to *A.B.* by *C.D.*, the receipt of which the said *A.B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A.B.* doth hereby assign unto *C.D.*, his executors, administrators, and assigns all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent per annum [*or whatever else may be the rate*]. And the said *A.B.* doth further agree and declare that he will duly pay to the said *C.D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A.B.* doth also agree with the said *C.D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C.D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A.B.* in the presence of me *E.F.* [*add witness's name, address, and description*].

STAMP DUTIES ON BILLS OF SALE.

Absolute Bills of Sale must be stamped according to the following table.

A conveyance or transfer on the sale of any property (except stock of the Bank of England and the East India Company, or the debenture stock or funded debt of any Company or Corporation) is liable to stamp duty as follows:—

When the amount or value of the consideration for the sale does not exceed	£5...	£ 0	s. 0	d. 6
Exceeds £5 and does not exceed	10...	0	1	0
„ 10 „ „	15...	0	1	6
„ 15 „ „	20...	0	2	0
„ 20 „ „	25...	0	2	6
„ 25 „ „	50...	0	5	0
„ 50 „ „	75...	0	7	6
„ 75 „ „	100...	0	10	0
„ 100 „ „	125...	0	12	6
„ 125 „ „	150...	0	15	0
„ 150 „ „	175...	0	17	6
„ 175 „ „	200...	1	0	0
„ 200 „ „	225...	1	2	6
„ 225 „ „	250...	1	5	0
„ 250 „ „	275...	1	7	6
„ 275 „ „	300...	1	10	0
„ 300				
For every £50, and also for any fractional part of £50, of such amount or value		0	5	0

Bills of Sale given by way of security for the payment of money must be stamped as mortgages.

Mortgage, Bond, Debenture, Covenant, Warrant of Attorney to confess and enter up judgment, and foreign security of any kind.

1. Being the only or principal or primary security for the payment or repayment of money, not exceeding.....	£25...	£ 0	s. 0	d. 8
Exceeding £25 and not exceeding.....	50...	0	1	3
„ 50 „ „	100...	0	2	6
„ 100 „ „	150...	0	3	9
„ 150 „ „	200...	0	5	0
„ 200 „ „	250...	0	6	3
„ 250 „ „	300...	0	7	6
„ 300				
For every £100, and also for every fractional part of £100, of such amount		0	2	6

	£	s.	d.
2. Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped :—			
For every £100, and also for any fractional part of £100, of the amount secured	0	0	6
3. Transfer, assignment, disposition, or assignation, of any mortgage, bond, debenture, covenant, or foreign security, or of money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment :—			
For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disponed	0	0	6

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JOHN HEYWOOD, Excelsior Steam Printing and Bookbinding Works, Hulme Hall Road Manchester.

BILLS OF SALE ACTS.

——:o:——

DIGEST OF ADDITIONAL MATTER.

BILLS OF SALE ACTS.

The figures [ ] refer to the pages of the original edition in which the same subjects are noted, or in case of entirely new matter to the page upon which it would be most conveniently placed.

Abstract.—See Registrar [40].

After Acquired Property [14].—The judgment in *Roberts* v. *Roberts*, which declared the grant of after acquired property to be good against the grantor, was followed in *Bouchette* v. *Attenborough*.

(*Kelly* v. *Kellond*, 3 *Times* L.R., 677 dissented from); 3 *Times* L.R., 813.

Appeal—Interpleader.—No appeal will lie from the summary decision of a Judge disposing of an interpleader issue under Order LVII. Rule 11. Such order is final and conclusive under sect. 17 Common Law Procedure Act, 1860, and there is no power under Order LVII. Rule 11 to give leave to appeal.

Lyon v. *Morris*, 56 L.J., Q.B., 378.

——**Notice of.**—A fourteen days' notice of appeal against a judgment of the Divisional Court, affirming the decision of a County Court Judge in an interpleader matter, is a good notice, the judgment of the Divisional Court being a final order under Order LVIII. Rule 3.

Hughes v. *Little*, 18 Q.B.D., 32; 56 L.J., Q.B., 96.

Assurance of Personal Chattels [6].—Where there was an agreement in writing for the purchase of a business and chattels, and an express lien or charge was reserved for the vendor, until the purchase money was paid, it was *held* on the bankruptcy of the purchaser that the agreement operated as an assignment to the purchaser upon purchase, and as a regrant to the vendor of the property purchased, and consequently was an assurance of personal chattels within the Bills of Sale Act, 1878, sect. 4, and that as it was not registered in accordance with sect. 8 of the same Act it was void as against the trustee in bankruptcy. *Coburn* v. *Collins*, 35 Ch.D., 373; 56 L.J., Ch. 504.

Attornment [11].—The Act does not apply when there is an attornment clause in a mortgage deed and where power of distress is not expressly given. *Hall* v. *Comfort*, 18 Q.B.D., 11.

Bills of Sale, What Are [3].—An entry in an auctioneer's book may be a Bill of Sale, and require registration. In 1886, at a produce sale by auction, one Williams bought a stack of hay for £40 5s. When the lot was knocked down to him, the auctioneer's clerk signed Williams's name in his book as purchaser (and so took the transaction outside the Statute of Frauds). The book was also signed by the auctioneer. No money was paid, one of the conditions being that the purchaser should have six months' credit upon giving satisfactory sureties, if required.

The sureties were not so required. No part of the property was delivered to Williams, but remained on the premises and in the apparent possession of the vendor. Upon a creditor of the vendor obtaining a judgment, the haystack was seized, and on an interpleader issue it was by Kay J. *held* that the memorandum was a bill of sale, and void for want of registration under sect. 4, Act 1878.

In re Roberts—Evans v. *Thomas*, 3 *Times* L.R., 678.

Bills of Sale—Public-house Agreement [3].—Where there was an agreement as to the letting of a public-house, and the tenant agreed that he would not sell any malt liquors or mineral waters other than those purchased from the landlord, and there was a proviso that if any money should during the tenancy be owing to the landlord for such malt liquors or mineral waters supplied by him, and that if such sum or sums of money should remain unpaid for twenty-four hours after a demand in writing for payment thereof had been left on the premises in respect of the amount due, the document was *held* to be a Bill of Sale.

Pulbrook v. *Ashby & Co.*, 56 L.J., Q.B., 376.

(*In re Townsend*, 55 L.J., Q.B., 137; 16 Q.B.D., 532. *Hughes* v. *Little*, 18 Q.B.D., 35; 55 L.J., Q.B., 503; and *ex parte Hopcroft*, 14 W.R., 168. Cited.)

——**Application of** [5].—The Acts do not apply to Bills of Sale of goods not at the time of granting such Bills of Sale, in the possession of the grantor. Such Bills of Sale do not therefore require registration.

Hall v. *Smith*, 3 *Times* L.R., 805.

——**Evasions of** [7].—Where a hiring agreement is used to cover a security for a loan, it is a Bill of Sale within the Acts, and requires registration. But the case cited for this rule was reversed on appeal, on the ground that in this particular case the agreement did not cover a security for a loan.

North Central Waggon Co. v. *M. S. & L. Ry. Co.*, 35 Ch.D., 191; 56 L.J., Ch. 609.

Bill of Sale, Void.—See Void Bill of Sale [20].

Book Debts, Future [8, 13].—See Choses in Action.

Choses in Action [8, 13].—The judgment in *Official Receiver* v. *Tailby* has been reversed, on the ground that in this particular case the description of the future book debts was too vague.

Official Receiver v. *Tailby*, 18 Q.B.D., 25; 56 L.J., Q.B., 30; 3 *Times* L.R., 100.

Collateral Security.—Where a bill of exchange or promissory note is given as collateral security to a Bill of Sale, and it contains different terms to the Bill of Sale (*e.g.* that the whole amount should become due upon failure of any instalment, and where there is no such provision in the Bill of Sale), it renders the Bill of Sale void, the whole agreement not being stated. Where also the bill of exchange or promissory note would act as a defeasance of the Bill of Sale, the Bill of Sale would be rendered void for want of registration of such defeasance, under sect. 10, sub. sect. 3, of the Act of 1878.

Counsell v. *London and Westminster Loan and Discount Co.* 4 *Times* L.R., 2

Consideration [28].—Future advances. When a Bill of Sale was given to secure a certain sum, with a fixed time for payment, and also uncertain and future advances for the payment of which no time was appointed, the Bill of Sale was *held* to be void.

Cook v. *Taylor*, 56 L.J., Q.B., 202; 3 *Times* L.R., 800.

——**Statement of** [29].—Where the whole amount of the consideration was not paid at the date of the Bill of Sale, but the balance was paid two days later, the statement that the consideration was "now paid" was held sufficient. Day, J. (Coleridge, C.J. concurring) said, "It was beyond a doubt, however, that the grantor ought to have had the whole £100 at the time of the signing of the deed, and it was not to be delivered to the creditor until the whole sum was paid, and in two days later the rest was paid. It could not then be said that the consideration was not truly stated. . . . It would be disastrous to defeat a transaction substantially carried out on a mere technicality."

Walker v. *Carr & Co.* *The Times*, July 1st, 1887.

——**Statement of** [29].—When a Bill of Sale states the consideration to be a certain sum which is bonâ fide paid, the Bill of Sale is not rendered invalid by the return to the grantee of a portion of the sum for the payment of a real and honest antecedent debt.

Cochrane v. *Dixon* (*Ex parte Rolph*, 19 Ch.D., cited); 3 *Times* L.R., 717.

——**Statement of** [30].—When the consideration was stated to be "£32 or thereabouts now owing," and the debt was £32 2s., the consideration was *held* to be truly stated. Lord Esher, M.R., said, that if the true consideration had been £320 and was stated to be "£32 or thereabouts" the objection might have been good.

Hughes v. *Little*, 18 Q.B.D., 32; 56 L.J., Q.B., 96; 3 *Times* L.R., 121.

——**Statement of**.—Kay, J. "It appeared that an agreement had been executed between the parties, and that the draughtsman had ingeniously cut out of the agreement so much as could be embodied in a valid Bill of Sale and made a Bill of Sale of that part. The Act required that a Bill of Sale should state the true contract between the parties, and that was not the case here." Bill of Sale void.

Sharp v. *McHenry—Sharp* v. *Brown*, 3 *Times* L.R., 847.

——**Statement of—Bill of Sale in Substitution** [30].—Where a Bill of Sale is given in the place of a void Bill of Sale, it is sufficient to state the consideration as being "now paid."

In re Hockaday ex parte Nelson (*Credit Co.* v. *Potts*, 6 Q.B.D., 295; followed); 3 *Times* L.R., 285.

Conveyancing Acts, Incorporation of [34].—When incorporation of clauses of the Conveyancing Act does not affect the rights of the parties, [for example of when it does see *re Barber ex parte Stamford*] it does not invalidate a Bill of Sale. A Bill of Sale contained a clause "That the power of sale conferred on the mortgagees by sect. 19 of the Conveyancing Act, 1881, shall be exercisable by them in every respect as if sect. 20 of that Act had not been enacted." In the Bill of Sale,

express power was given to seize under sect. 7 of the Bills of Sale Act of 1884, and for no other causes than those therein contained.

Ex parte Official Receiver re Morritt, 18 Q.B.D., 222; 56 L.J., Q.B., 139.

Conveyancing Acts [34].—The clauses of the Conveyancing Act are opposed to the authorised form in the schedule of the Bills of Sale Act, 1882, and are not incorporated in it with regard to powers of sale.

Calvert v. *Thomas and Lloyd*, 19 Q.B.D., 204; 56 L.J., Q.B. 470; 3 *Times* L.R., 684.

Costs and Expenses [19]—See also Covenants.—The grantee may covenant to retain out of the proceeds of the sale the amount of costs properly incurred in defending and maintaining his rights under the Bill of Sale.

Lumley v. *Simmons* (App.), 34 Ch.D. 698; 56 L.J., Ch. 329.

Covenants [18].—The covenants relating to a Bill of Sale must all appear upon the face of the bill itself. Where a Bill of Sale after reciting a certain indenture contained *inter alia* an agreement by the grantee that he would "perform the covenants and stipulations contained in the said recited indenture," but these covenants did not appear in the Bill of Sale itself, the Bill of Sale was *held* to be void under sect. 9, Act 1882.

Lee v. *Barnes*, 17 Q.B.D., 77.

——[19]—As to powers of retaining costs of seizure and sale, retaining costs of discharging incumbrances, &c., in addition to *Consolidated Credit and Mortgage Co.* v. *Gosney* must be cited

Ex parte Rawlings re Cleaver (app.), 18 Q.B.D., 489.

——**Costs where Mortgagee an Auctioneer** [19.]—But where the mortgagee is an auctioneer he is not permitted to retain his charges and commission as an auctioneer upon the sale of the chattels comprised in a Bill of Sale, and a covenant to this effect renders a Bill of Sale void.

Furber v. *Cobb*, 18 Q.B.D., 494; 56 L.J., Q.B., 273; 3 *Times* L.R., 456.

——**As to Removal of Chattels** [19].—A covenant not to remove the chattels without the consent of the mortgagee in writing, was held by the court of appeal to be a covenant for the maintenance of the security and not to invalidate a Bill of Sale. *Furber* v. *Cobb.*

——**As to Deterioration and Renewal of Goods** [19].—A covenant against permitting the chattels in a Bill of Sale to be injured or destroyed, or to deteriorate in a greater degree than by reasonable use and wear, and forthwith to replace, repair, and make good any of them which should be destroyed, injured, or deteriorated, with power of seizure in default, was *held* to be valid. The question to be decided is whether the covenant, considering the nature of the chattels, is necessary for the maintenance of the security. In this case the chattels were household furniture. *Furber* v. *Cobb* (reversing *Bowen*, L.J., upon this point).

——**As to Costs and Expenses** [19].—The clause as to costs and expenses must not be too wide. The mortgagor must not "be saddled with unknown and oppressive charges." When there was a clause "that

the mortgagee shall with and out of the moneys to arise from any such sale as aforesaid, in the first place pay the expenses attending such sale, *or otherwise incurred in relation to this security*," the Bill of Sale was *held* to be void. *Calvert* v. *Thomas*, 19 Q.B.D., 204; 56 L.J., Q.B., 470; 3 *Times*, L.R., 684.

Covenants—As to Sale of Chattels [19].—When a Bill of Sale contained a provision that upon default in payment of any of the sums secured the grantee might enter and seize the goods assigned, "have them valued, and purchase them at such valuation" it was *held* to be void.
Lyon v. *Morris*, 56 L.J., Q.B., 378.

——**As to Mortgages** [20].—A covenant, binding the grantor to pay the interest on mortgages, renders a Bill of Sale void.
Watson v. *Strickland*, 19 Q.B.D., 391; 3 *Times* L.R., 815.

——**As to Retention of Documents** [20].—A covenant, giving to the grantee the right of retaining the indenture and documents after payment of the sums secured, renders a Bill of Sale void.
Watson v. *Strickland.*

——**As to Breaking into Premises** [20].—*Lumley* v. *Simmons*, 55 L.J., Ch. 759. Affirmed Ct. App. 56 L.J., Ch. 329; 34 Ch. D. 698.
Exparte Official Receiver re Morrett, 189 B.D., 222.

——**As to Advertising Bills** [20].—A covenant "that for the purpose of such sale as aforesaid, or for preserving the security hereby intended to be created, or for any other purpose whatsoever," the grantee "might at any time during the subsistence of the security affix such bills or placards, having reference to the said chattels and things as he or they might think fit, upon any premises, for the time being, in the occupation of the grantor" was *held* to invalidate a Bill of Sale, not being a covenant necessary for the maintenance of the security.
Bardell v. *Daykin* (*Jarvis claimant*), 3 *Times* L.R., 526.

——**Costs.**—There may be a covenant by which a grantee becomes entitled to retain the amount of costs properly incurred in defending or maintaining the security, out of the proceeds of the sale of the chattels.
Lumley v. *Simmons*, 34 Ch.D., 698; 56 L.J. Ch. 329.

——Where there is a covenant giving power to seize upon failure to produce receipt for rent upon demand, not in writing or upon composition with creditors (not bankruptcy), the Bill of Sale was *held* void.
Barr v. *Kingsford*, 3 *Times* L.R., 524.

Debenture.—A memorandum by a company charging the whole undertaking, property, and effects, to secure the repayment to certain persons of a sum of money and interest, and containing a warrant to pay such sum to such persons *pari passu*, is a debenture in the ordinary acceptation of this term, and by virtue of sect. 17, Act 1882, exempt from registration as a Bill of Sale.
Edmonds v. *Blaina Furnaces Co.*, 56 L.J., Ch. 815.

Debentures.
Ross v. *Army and Navy Hotel Company;* reported on App. 34; Ch.D., 43.

Description of Grantor [23].—A Bill of Sale is not invalidated by the business name instead of the real name of the grantor being inserted.
Cochrane v. *Dixon*, 3 *Times* L.R., 717.

Estoppel.—See Void Bill of Sale.

Form, Non-compliance with.—See also Covenants.—Where there is a provision that the purchaser should not be bound to inquire whether any default has been made the Bill of Sale is void.
Blaiberg v. *Beckett*, 3 *Times* L.R., 17.

Interest, Rate of [31].—When the rate of interest was stated to be "one shilling in the pound per month," the Court of Appeal held the Bill of Sale to be valid.
Lumley v. *Simmons*, 34 Ch.D., 698; 56 L.J., Ch. 329.

——**Payments of** [31].—Interest is not required to be paid in equal instalments. "Equal payments," in the form in the schedule, means that the principal sum shall be payable either in one sum or by equal payments (see, however, *re Cleaver ex parte Rawlings*, and *Watkins* v. *Evans*), and that the interest due on such payment is payable at the same time. *Goldstrom* v. *Tallermann*, 18 Q.B.D. 1, (App.)

——**Payment of.**—If in a Bill of Sale provision is made for the payment of interest on a day certain, irrespective of the period at which the interest would become due according to the ordinary course of events, the Bill of Sale is void.
Roe v. *Mutual Loan Fund Association*, 3 *Times* L.R., 755. Reported also on another point (see Void Bill—Estoppel), 19 Q.B.D., 347.

Interest on Interest [37].—Interest upon interest is still not permitted. The case upon the point has been reversed, not upon principle, but upon the facts of the case. The Court of Appeal reversed the judgment below on the ground that, on a proper construction of the Bill of Sale, "interest on interest" was not reserved.
Goldstrom v. *Tallermann*, 18 Q.B.D., 1.

Instalment.—See Payment.

Landlord, Rights of.—See Removal of Chattels, and Sale, Five clear days between Seizure and.

Outgoings [37].—A clause securing the payment of "outgoings" on premises wherein are the chattels concerned does not invalidate a Bill of Sale. *Goldstrom* v. *Tallermann*, 18 Q.B.D., 1.

Payment, Time for [18].—Where a Bill of Sale is by way of securing a guarantor, there must, as in all other cases, be a stipulated time for payment. *Hughes* v. *Little* (on appeal reversing former decision), 18 Q.B.D., 320.

——**Of Principal Sum.**—The instalments of the principal sum need not be equal in amount. The schedule is in this respect "directory," and not "obligatory."
In re Cleaver ex parte Rawlings. (App.) 18 Q.B.D. 489; 56 L.J., Q.B. 197.
Watkins v. *Evans.* 18 Q.B.D. 386; 56 L.J., Q.B. 200.

Payment of Principal Sum.—It does not invalidate a Bill of Sale to make the whole of the principal sum and the interest then due payable upon failure of the grantor to pay an instalment at the time agreed upon.

Lumley v. *Simmons*, 34 Ch.D., 698.

Receipts [6].—In addition to *Fox* v. *Barnett* and *Marsden* v. *Meadows*, *Hay* v. *Nathan* (3 *Times* L.R., 11) and *Painacott* v. *Dieudonné* (2 *Times* L.R., 78) should be cited.

——See also by **Sheriff**.

Registration—True Copy.—Where the copy, filed in accordance with the Act of 1878, contained certain blanks which were not in the original Bill of Sale, but which in the opinion of the court were immaterial, even had they been in the Bill of Sale itself, the Bill of Sale was *held* to be properly registered and valid.

Sharp v. *McHenry*—*Sharp* v. *Brown*, 3 *Times* L.R., 847.

——Rectification of, by Judge [43].—In 1875 a post-nuptial settlement was executed and registered as a Bill of Sale. In 1880 it was re-registered, but owing to an inadvertence the registration was not renewed in 1885. Upon this omission being discovered, application was made to a Judge in Chambers, and in October, 1886, leave was granted to renew the registration. In November, 1886, the settlor became bankrupt. By an error in the affidavit, filed in accordance with sect. 11, Act 1878, upon the renewed registration, such registration became void. Upon this being discovered in February, 1887, the trustees of the settlement applied *ex parte* to the same Judge to allow the error to be amended and the register to be rectified. An order was made to this effect, the Judge stating his intention to be that the parties should be put back into the position they would have been in in October, 1886, had no mistake been made. Upon an application by the settlor's trustee in bankruptcy to discharge or vary the order for the benefit of the creditors, *held* that sect. 14 conferred full power upon the Judge, in his discretion, both to grant leave to renew the registration and to rectify the subsequent error. *Re Dobbin's Settlement*, 56 L.J., Q.B., 295.

Registrar [40].—The omission of the Registrar of Bills of Sale to transmit an abstract of a Bill of Sale to the Registrar of the County Court of the district (in pursuance of sect. 11, Act 1882) does not invalidate the Bill of Sale.

Trinidi v. *Rayner* (*Brown claimant*), 56 L.J., Q.B., 422.

Removal of Chattels.—When the grantee of a Bill of Sale removed the chattels comprised therein from the premises without fraud or collusion with the tenant, the landlord has no right to follow the goods.

Walker v. *Carr & Co.*, *The Times*, July 1st, 1887.

Sale, five clear days between Seizure and [42].—The rule under section 7, Act, 1882, as to five clear days elapsing between seizure and sale is for the benefit of the grantor only. With the grantor's consent the grantee may remove the goods before the prescribed time, and the landlord has no remedy against him for loss of rent owing to such removal. *Lane* v. *Tyler*, 56 L.J., Q.B. 461.

Schedule [12].—A bill of sale is void if there is no schedule attached thereto.

Griffin and another v. *Union Deposit Bank*, 3 *Times* L.R. 608.

——**Inventory in** [12].—In the case of *Witt* v. *Banner*, a stricter rule as to the specific description of the articles in the inventory was laid down than in *Roberts* v. *Roberts* (13 Q.B.D. 794, 53 L.J., Q.B. 513). There must be a description from which the articles can be identified. This may be gathered from the Bill of Sale itself and from the inventory. In this case the facts differed from those in *Roberts* v. *Roberts*; in that case *all* the chattels on the premises were assigned. In the later case the inventory ran "at 77, Mortimer Street aforesaid—450 oil-paintings in gilt frames, 300 oil-paintings unframed, 50 water-colours in gilt frames, 20 water-colours unframed, and 20 gilt frames." *Held* that the description was insufficent and that the Bill of Sale was void. Leave to appeal was given.

Witt v. *Banner*, *Simmons claimant*, 19 Q.B.D. 276, 3 *Times* L.R. 759.

Seize, power to.—Power to seize in the events mentioned in section 7, Act, 1882, is implied if not expressly given.

Watkins v. *Evans* (app.), 18 Q.B.D. 386, 56 L.J., Q.B. 200.

Sheriff, Bill of Sale by [6].—If a Sheriff gives a Bill of Sale of goods taken in execution such Bill requires registration and attestation, under sect. 10, Act 1882. But if the Sheriff has the goods valued and delivered to a purchaser in good faith, the sale is valid without a Bill of Sale. The Sheriff may sell to the execution creditor.

Hernaman v. *Bowker*, 11 Ex., 760.

Ex parte Villars re Rogers, L.R. 9.; Ch., 432; 42 L.J.; Bank 76.

——**Receipt by** [6].—A receipt with inventory attached, given by a Sheriff after an absolute sale by him, is not a Bill of Sale if merely an acknowledgment of the money received.

Marsden v. *Meadows*, 7 Q.B.D. 80.

Woodgate v. *Godfrey*, 5 Ex.D. 24, 49 L.J., Ex. 1, 42 L.T. 34, 28 W.R. 88.

——**May not sell by Bill of Sale in certain cases** [6].—By sect. 145 Bankruptcy Act, 1883, the Sheriff, after an exceution where debt and costs amount to more than £20, may not sell the goods seized by Bill of Sale or private contract without leave of the court whence process issued.

Vessel [7].—A dumb barge is a vessel within the meaning of sect. 4, Act 1878, which excepts from the operation of the Act "transfers or assignments of any ship or vessel."

Gapp v. *Bond*, 19 Q.B.D., 200; 3 *Times* L.R., 621.

Void Bill of Sale [20], **Proceeds of.**—Where one Townsend gave a Bill of Sale which was void to one Parsons, and Parsons sold part of the goods, Townsend told him in the presence of the auctioneer to keep the money in part payment of the debt. The auctioneer did not pay over

the money, but it was *held* that he was the agent of Parsons, and that as Townsend had assented to Parsons receiving the money, Townsend's trustee, under a subsequent bankruptcy, was not entitled to the money.

Parsons v. *Dewsbury and Clarke*, 3 *Times* L.R., 354.

Void Bill of Sale, Bill Given in Place of.—In a Bill of Sale given in place of a void Bill of Sale, it is sufficient to state the consideration as being "now paid."

Re Hockhady ex parte Nelson (*Credit Co.* v. *Potts*, 6 Q.B.D., 295 followed), 3 *Times* L.R., 285.

——**Estoppel.**—The grantor of a Bill of Sale filed a petition in bankruptcy before payment of the first instalment. The grantees seized, and the proceeds of the sale being insufficient to cover the debt, proved in the Bankruptcy for the residue. The grantees with the other creditors received a composition of 2s. 6d. in the pound. Subsequently the grantor brought an action against the grantees for wrongful seizure, alleging that the Bill of Sale was void. *Held* reversing Pollock B., that the plaintiff was estopped from alleging that the Bill of Sale was void, having in the bankruptcy treated the Bill as valid, and having thereby secured an advantage to himself.

Roe v. *Mutual Loan Fund, Limited*, 19 Q.B.D., 347.

PRECEDENT OF BILL OF SALE.

This indenture, made the day of , one thousand eight hundred and eighty , between (1) of (2) (3) of the one part, and (1) of (2) (3) of the other part, witnesseth that in consideration of (4) pounds [or whatever else the true consideration may be] now paid to by , the receipt of which he, the said hereby acknowledges, he, the said , doth hereby assign unto , his executors, administrators, and assigns, all the singular and several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of pounds and interest thereon at the rate (5) of per cent per annum [or whatever else may be the rate], and the said doth further agree and declare that he will duly pay to the said the principal sum aforesaid, together with the interest then due by equal (6) payments of £ on the day (7) of 18 , the day of the day of , and the day of , 18 [or whatever the stipulated times may be] (8), and the said doth also agree with the said that he will at all times during the continuance of this security insure and keep the said chattels and things insured against loss or damage by fire in the sum of pounds at the least, and will apply the moneys to be received by virtue of any such insurance in payment to the said of the principal sum aforesaid, or so much thereof as may then remain unpaid, together with the interest then due. And also will punctually pay all rent, rates, and taxes to become due and payable in respect of the premises on which the said chattels and things, or any of them, shall be and will upon demand in writing by the said produce to him the last receipts for rent, rates, and taxes, and for the payment of the premium of the insurance aforesaid. And that if the said shall neglect to pay any rent, rates, or taxes, or to effect or to continue the assurance of the said chattels and things, or to produce to the said the last receipts for any rent, rates, or taxes, or the said policy of insurance, or the last receipt for premium thereon without reasonable excuse upon demand in writing as aforesaid, then the said , if he shall think fit and without prejudice to his right to exercise the powers hereinafter contained arising by such default, may pay such rent, rates, and taxes as aforesaid, or effect and continue the said insurance, and shall be entitled to retain the amount so expended from the balance which may remain after the principal sum or so much thereof as remains unpaid and the interest due thereon have been satisfied out of the proceeds of the lawful sale of such chattels in manner hereinafter prescribed upon one of the events or defaults hereinafter mentioned as lawful causes for seizure and sale occurring. And that the said and every other person or persons claiming by or through the said any interest in the said chattels and things or any of them will at all times, at the cost of the said execute and do all such assurances and things for the further and better assuring all or any of the said chattels and things unto the said and enabling him to obtain possession of the same as may by him be lawfully required. And the said doth further covenant that he will not remove the said chattels or any of them without the consent of the said , in writing, and the said further covenants that he will not permit the chattels assigned or any of them to be injured or to deteriorate in a greater degree than by reasonable use and wear, and that he will forthwith replace, repair, and make good any of the said chattels which shall be destroyed, injuried, or deteriorated And the said agrees that the said or his agent or servants shall at all reasonable times have access to the premises wherein

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(1) Full name.
(2) Full address, so that anyone may recognise clearly who the parties are.
(3) Full and correct description must be added.
(4) The consideration must be duly stated.
(5) The *rate* of interest must be stated. Interest stated as a lump sum vitiates a Bill of Sale. (*Myers* v. *Elliot.*) So does interest on interest. (*Goldstrom* v. *Tallermann.*)
(6) Insert "quarterly," "half-yearly," "monthly," or whatever the payment may be.
(7) There must be a stipulated time or times of payment. (*Hetherington* v. *Groome, &c.*)
(8) If only one time of payment is agreed to, the Bill will run—"the principal sum, together with the interest then due on the day of , 18 ."

the said chattels may be, that he may then inspect the said chattels. And it is hereby agreed and declared that in case the said shall make default in payment of the principal sum aforesaid, or any part thereof, at any of the said times [or time] hereinbefore provided for payment, or in the performance of any covenant or agreement herein contained and necessary for maintaining this security, or if he shall become a bankrupt or suffer the said chattels or things or any of them to be distrained for rent, rates, or taxes, or if the said shall fraudulently either remove or suffer the said goods or any of them to be removed from the premises on which the same are or shall be, or if he shall not without reasonable excuse upon demand in writing by the said produce to him the last receipts of the said for rent, rates, taxes, or for the payment of the premium on the insurance aforesaid, or if execution shall have been levied against the goods of the grantor under any judgment at law, it shall be lawful for the said his servants or agents, to enter into and upon the premises on which the said chattels and things, or any of them, are or shall be, and to seize and take possession of the whole or any part thereof, and after the expiration of five clear days from the day of so seizing and taking possession to remove, sell, and dispose of the same, or any of them, for such price or prices as can reasonably be obtained, and either by public auction or private contract, and out of the sale moneys to retain the principal sum aforesaid, or so much thereof as may for the time being remain unpaid and the interest then due, together with all costs and expenses incurred in the warehousing, seizing, removing, valuing, and selling of the said chattels, and the amount of money expended in the discharge of rent, rates, taxes and premiums on insurance as aforesaid, and shall pay the surplus (if any) to the said . And it is hereby declared and agreed that this assignment shall be void if the principal sum aforesaid, with the interest thereon, shall be be paid to the said his executors, administrators, and assigns, at the times [or time] and in manner aforesaid. Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said , for any cause other than those specified in section 7 of the Bills of Sale Act, 1878, Amendment Act, 1882. In witness whereof the parties have hereunto set their hands and seals this day and year first above written.

Signed and sealed by the said
in the presence
of me. [Name]

Witness's address and description must be added.

Received the day and year first before written of and of the said the sum of being the consideration money herein-before expressed to be paid by him to me. £

Witness

The schedule above referred to.

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